(1)

Supreme Court, U.S.
FILED

No. 941638 APR 6 1995

OFFICE OF THE CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1994

JESSIE SHIOW-JIUAN HO

Petitioner

vs.

THE STATE BAR OF CALIFORNIA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

JESSIE SHIOW-JIUN HO
111 North Market Street, Suite 707
San Jose, Ca. 95113

1-408-279-1093

Petitioner Attorney *Pro Se*

QUESTIONS PRESENTED

1. Is the absence of recusal remedies for State Supreme Court Justices a violation of due process of law?

2. Is a State Supreme Court which appoints employees to a private party, and by finding against the other party obtains monies for their appointees' employer to reimburse their appointees' salaries and benefits, disqualified to sit on cases involving that party?

3. May a State Supreme Court sign a stipulated order when consent thereto has been withdrawn by a party prior to its approval?

4. Is a stipulation which contains no disclosure of monies demanded and of the relationship of a party to the judge and other conflicts of interest required to be set aside for lack of an informed consent?

5. When the law relied on has been changed by a party subsequent to signing a stipulation but prior to approval by the Court, does due process require that a party be permitted to withdraw her consent to the stipulation?

LIST OF PARTIES

The parties are as follows:

JESSIE SHIOW-JIUN HO
111 North Market Street, Suite 707
San Jose, Ca. 95113

1-408-279-1093

Petitioner Attorney *Pro Se*

THE STATE BAR OF CALIFORNIA
555 Franklin Street
San Francisco, Ca. 94102-4498

1-415-561-8200

Respondent

TABLE OF CONTENTS

Page

Questions Presented.....i
List of Parties.....ii
Introduction.....1
I. Orders Below 2
II. Jurisdiction.....2
III. Constitutional and Statutory Provisions Involved.....2
IV. Statement of the Case.....3
V. Reasons for Granting the Writ.....6

A. The Absence of Judicial Recusal Remedies Concerning a State Supreme Court Poses Due Process Problems 6

B. A State Supreme Court which is a Partisan for a Prosecuting Party poses Dangers concerning the Licensing of a State's Attorneys 8

C. A Court signing a Stipulation to which consent has been withdrawn prior to its approval involves Due Process violations 9

D. Stipulations for Attorney Discipline based on Undisclosed Conflicts of Interest within prosecutors and judges should be voided for lack of an informed consent 11

E. When a Party has changed the Law relied on, a Stipulation based on the Remedies relied on should be voided 14

Conclusion.....16

Table of Authorities

Cases

Aetna Life Insurance Company v. La Voie 475 U.S. 813, 89 L. Ed. 823, 106 S. Ct. 1580 (1988).....8
Armstrong v. Manzo 380 U.S. 545, 552, 85 S. Ct. 1187, 1191, 14 L. Ed. 2d. 62 (1965).....10
Boykin v. Alabama 395 U.S. 238, 242-244, 89 S. Ct. 1709, 1711-1713, 23 L. Ed.2d. 274 (1969).....14
Carnegie Steel Company v. Cambria Iron Company 185 U.S. 403, 46 L. Ed. 968, 22 S. Ct. 698 (1902).....9
In re Gault, 387 U.S. 31, U.S. 31, 34, 18 L.Ed.2d. 527, 87 S. Ct. 1428 (1966).....13
In re Ruffalo 390 U.S. 544, 88 S. Ct. 1222, 20 L.Ed.2d. 117 (1968).....13
Kercheval v. United States 274 U.S. 220,223, 47 S. Ct. 582, 583, 71 L. Ed. 1009 (1927).....13
Logan Lumber Co. v. Commissioner of Int. Revenue 365 F. 2d. 846, p. 855 (Fifth Cir. 1966).....10,14
Machibroda v. United States 368 U.S. 487, 493, 182 S. Ct. 510, 513, 7 L.Ed.2d. 473 (1962).....14
Mathews v. Eldridge 424 U.S. 319, 333, 85 S. Ct. 893, 902, 47 L. Ed. 2d. 18 (1976).....10
Moran v. Burbine 475 U.S. 412, 421 106 S. Ct. 1135, 1141, 89 L. Ed.2d. 410 (1986).....13
United States v. Tacoma 330 F. 2d. 153 (Ninth Cir.1964).10

United States Statutes

27 U.S.C.A. s. 1257(3).....2

United States Constitution

Amendment XIV.....2

California Constitution

Article 6, section 1.....3

Article 6, section 9.....3

State Statutes:

California Business and Professions Code

Section 6079.1.....3
Section 6079.5.....3
Section 6086.5.....3
Section 6086.10.....3
Section 6086.10(b)(3).....3
Section 6086.65(a).....3
Section 6140.7.....3,4

Transitional Rules of Procedure of the State Bar of California

Rule 462.....14

Rules of Procedure of the State Bar of California

Rule 282.....15

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1994

JESSIE SHIOW-JIUN HO

Petitioner

vs.

THE STATE BAR OF CALIFORNIA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

Petitioner Attorney respectfully prays that a writ of certiorari issue to review the judgment of the California Supreme Court, Case No. S044354, entered on March 16, 1995, denying a motion for its recusal and denying a Petition for Review and Application for a Stay. The Petition requested non-approval of a stipulation with the State Bar of California to which consent had been withdrawn, upon discovery by the Petitioner of its undisclosed financial interest in the proceedings.

ORDERS BELOW

The order of the California Supreme Court [1] denying the motion for recusal and the Petitioner's Petition for Review and Application for a Stay and entering an order of suspension of the Petitioner based on a stipulation to which Petitioner had withdrawn her consent is reproduced at Appendix A.

II.

JURISDICTION

The jurisdiction of this Court is involved under 27 U.S.C.A. s. 1257(3). This Petition for writ of certiorari is timely filed within ninety days of the order of the Supreme Court of California on March 16, 1995. Appendix A.

III.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

Amendment XIV: "No State shall .... deprive any person of life,

---

1 The order is signed by an unidentified Acting Chief Justice.

liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

California Constitution

Article 6, section 1: "The judicial power of the State is vested in the California Supreme Court, the Courts of Appeal, the Superior Courts, and the Municipal Courts. All courts are courts of record"

Article 6, section 9: "The State Bar of California is a public corporation...."

State Statutes:

The state statutes at issue are California Business and Professions Code sections 6079.1, 6079.5, 6086.5, 6086.10, and 6086.65(a), and 6140.7 They are set forth at Appendix B.

IV.

STATEMENT OF THE CASE

Petitioner entered into a stipulation with an employee of the State Bar concerning an attorney disciplinary matter prior to the issuance of a Notice of charges on November 16, 1994. Said stipulation provides that, "The parties agree that stipulations as

to proposed discipline involving suspension, are not binding on the Supreme Court of California.... The Supreme Court must enter an order effectuating the terms and conditions of this stipulation before any stipulation for suspension, actual or stayed, will be effective." Appendix D-9,D-14, Stip, p. 4, Effect of this Stipulation, item 4. It provides, "the agreed disposition is eligible for costs to be awarded to the State Bar. (Bus. & Prof. Code s. 6086.10 and 6140.7). Petitioner has been notified of his or her duty to pay costs. The amount of costs assessed by the Office of Trial Counsel will be disclosed in a separate cost certificate submitted following approval of this stipulation by a hearing judge. The amount of costs assessed by the State Bar Court will be disclosed in a separate cost certificate submitted upon finalization of this matter." Appendix D-16, Stip, Pg.4, item H1.

The Petitioner notified the State Bar of her withdrawal of consent to the stipulation on December 8, 1994, which was acknowledged as received December 14, 1994 . She also notified the California Supreme Court. None-the-less, The State Bar on January 11, 1995 sent a transmittal of its recommendation for

approval of the stipulation to the California Supreme Court. It sent a prepared order for its signature. It attached a claim of "costs" of $1,517.70. There were no out-of pocket costs listed. It claimed costs of $1,044.70 for the Office of Investigation and the Office of Trials of the State Bar of California. Of the $1,044.70, the Office of Trials assessed $309.00 for itself. The Office of Investigations of the State Bar assessed $387.00 for itself. It attached a claim for $473.00 for the Office of the State Bar Court of the State Bar of California. It also had no out-of-pocket costs. No itemization was provided of the $1,517.70 costs. Appendix D-5, D-6, D-7.

Based on Petitioner's discovery on or about January 16, 1995 that the State Bar of California collected its employee prosecutors, investigators, and "judges" salaries and benefits on a time-expended basis as claimed "costs" by securing guilty adjudications in attorney disciplinary proceedings which is not disclosed to an accused until after they stipulate or are found guilty and she discovered other undisclosed financial interests, Petitioner on January 26, 1995 filed with the California Supreme

Court a Petition for Review and Application for a Stay based on her withdrawal of consent to the stipulation prior to its transmittal or approval by the California Supreme Court. Said Petition for Review and Application for a Stay is reproduced at the Appendix as D.

Petitioner filed a Motion for Recusal of the California Supreme Court's and requested it rule on the motion before hearing and determining the merits, so as to permit the Petitioner access to the federal court concerning the bias issue. Said motion is reproduced at the Appendix at C.

On March 27, 1995 the California Supreme Court summarily denied the petition for a writ of review, application for stay, motion for recusal and ordered the stipulation entered as an order and ordered costs awarded to the State Bar. Appendix A.

V.

REASONS FOR GRANTING THE WRIT

A. The Absence of Judicial Recusal Remedies Concerning a State Supreme Court Poses Due Process Problems

The Motion for Recusal of the California Supreme Court

Justices poses the problem that their approval of the stipulation, while consent had been withdrawn, would financially benefit the employer of its appointees to the State Bar and recoup the salary and benefits of its appointees to a party on a time-expended basis. Appendix D.[2] The $473.00 for the State Bar Court judge recoups its appointee's private salary and benefits in approving the stipulation. The $309.00 recoups the salary and benefits of its appointee's co-employee private prosecutor, and the $387.00 recoups the private salary and benefits of its appointees' co-employer investigator. By finding cause for a violation of the probation terms in said stipulation, a minimum of $4,470 in

---

The State Bar of California's employees are the prosecutors against accuseds. In 1989 the California Supreme Court appointed nine employees to the State Bar of California. In 1993 it appointed a tenth employee. They sit as judges to the State Bar's private State Bar Court. They require over a million dollars a year for their collective private salaries and benefits. By the State Bar and its judges having accuseds stipulate to dispositions and costs, they then impose their salaries and benefits as the claimed "costs" without prior disclosure to an accused, and for each probation violation proceeding, they impose a minimum of an additional $4,470 in salaries and benefits for themselves. By disbarring and suspending the State's attorneys, the State Supreme Court obtains monies for the employer of its appointees to the State Bar party. Appendices C,D.

additional salaries and benefits for the employer of its appointees to a party from each additional taking of the Petitioner's license to practice law would thereby be obtained. Over fourteen million dollars for the private employer of its appointees has been obtained from 3,091 license takings in less than four and half years. Appendix D-9.

The lack of statutes, rules, or constitutional provisions permitting recusal of a State Supreme Court judge in the California system poses the problem that a party has no procedural remedy to assure a fair and impartial adjudicator within its State Supreme Court.

B. A State Supreme Court which is a Partisan for a Prosecuting Party poses Dangers concerning the Licensing of a State's Attorneys

Based on this Court's statement that the test is whether the situation offers a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clean, and true between the State and the accused, **Aetna Life Insurance Company v. La Voie** 475 U.S. 813, 89 L. Ed. 823,

106 S. Ct. 1580 (1988), is not a situation where a State Supreme Court appoints employees to a prosecuting party, which is privately financed, and where by denying all issues of all accuseds, including withdrawal of consent to a stipulation, it orders monies paid as "costs" to reimburse the party for the salaries and benefits of not only its appointees to a party, but for their co-employees as well, such a situation of temptation to not hold the balance nice, clean, and true, that recusal of the California State Supreme Court Justices was and is required?

C. A Court signing a Stipulation to which consent has been withdrawn prior to its approval involves Due Process violations

Pursuant to **Carnegie Steel Company v. Cambria Iron Company** 185 U.S. 403, 46 L. Ed. 968, 22 S. Ct. 698 (1902), "a stipulation of counsel entered into for the purpose of saving time may be repudiated where the facts subsequently developed show that with respect to a particular matter, it was inadvertently signed, provided that notice be given in sufficient time to prevent prejudice to the opposite party." The Circuit Courts have generally adopted a "manifest injustice" standard by which a party

is permitted, after court approval, to withdraw consent to a stipulation. **Logan Lumber Co. v. Commissioner of Int. Revenue** 365 F. 2d. 846, p. 855 (Fifth Cir. 1966), **United States v. Tacoma** 330 F. 2d. 153 (Ninth Cir. 1964). There are no cases concerning withdrawal of consent to a stipulation before it has been submitted and approved by a court. It appears that the supervisory power of the Court will not attempt to enforce a stipulation when a party has withdrawn consent to it prior to its submission for approval to a court. If a party withdraws consent, it would appear there is no stipulation upon which the court may act. It would appear this issue of due process of law must be resolved by this Court, since other courts may also be enforcing and ordering stipulations entered when consent has been withdrawn by a party prior to a Court's approval.

May a Court, consistent with the due process right to "an opportunity to be heard at a meaningful time and in a meaningful manner," **Mathews v. Eldridge** 424 U.S. 319, 333, 85 S. Ct. 893, 902, 47 L. Ed. 2d. 18 (1976) (quoting **Armstrong v. Manzo** 380 U.S. 545, 552, 85 S. Ct. 1187, 1191, 14 L. Ed.

2d. 62 (1965), approve a stipulation to which consent has been withdrawn prior to its submission for approval to the court, when the stipulation's provisions state that the California Supreme Court must enter an order effectuating the terms and conditions of the stipulation before it is effective?

D. Stipulations for Attorney Discipline based on Undisclosed Conflicts of Interest within prosecutors and judges should be voided for lack of an informed consent

The stipulation's claim that the Respondent has been advised of her obligation to pay costs to be disclosed later would not have placed an ordinary person on notice that the prosecutor, his co-employee investigator, and what the Petitioner learned later, their mutual co-employee judge of the State Bar's State Bar Court, would be demanding the Petitioner pay their salaries and benefits. The purpose of entering a stipulation before charges are filed is to have no costs or expenses incurred and no liability for the same. Had the State Bar or its judges advised the Petitioner that the price of entering the stipulation was to pay their salaries and benefits and that for any further proceedings concerning revocation of probation under it, the judge would like

his and his co-employee prosecutors and investigators' salaries and benefits paid by the Petitioner by his finding a violation and taking the Petitioner's license, the Petitioner would have been forewarned not to sign the stipulation as this is a private, for profit operation the State Bar is running instead of a proper attorney licensing system. Appendix D-16.

The stipulation did not disclose the State Bar Court is not a Court and its judge approving and overseeing it is selected and employed by the prosecuting party from its private funds. It states that,"The parties agree that the State Bar Court has jurisdiction over Respondent to take the action agreed upon within this stipulation." Stip.,p. 3, B. There is no disclosure that the State Bar Court is not a Court, but a private program created and run by the State Bar's employees. There is no disclosure that its judges are selected and paid by the State Bar as their employees. There is no disclosure that this entity has no rules of a court or of an administrative entity. The prosecuting party writes its rules. For example, hearings are barred. Appendix D-29, D-30.

The Petitioner identified seventy eight items of lack of

disclosure by the State Bar and its judges concerning their various conflicts of interest and the monies they want for various schools, programs, examinations the stipulation would have forced the Petitioner to pay for which were never disclosed in it or by them to the Petitioner. Appendix D-18, D-19, Reply Brief.

As stated by this Court in **In re Ruffalo** 390 U.S. 544, 88 S. Ct. 1222, 20 L.Ed.2d. 117 (1968), at p. 551, in reference to attorney disciplinary proceedings, "These are adversary proceedings of a quasi-criminal nature. Cf. **In re Gault,** 387 U.S. 1, 33." The issue is whether due process requires that the stipulation be voided for lack of an informed consent under the reasoning of this Court that "... The relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must be made with full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." **Moran v. Burbine** 475 U.S. 412, 421 106 S. Ct. 1135, 1141, 89 L. Ed.2d. 410 (1986), **Kercheval v. United States** 274 U.S. 220,223, 47 S.

Ct. 582, 583, 71 L. Ed. 1009 (1927). It did not reflect "the unfettered choice of the defendant." **Boykin v. Alabama** 395 U.S. 238, 242-244, 89 S. Ct. 1709, 1711-1713, 23 L. Ed.2d. 274 (1969). It was not made voluntarily, knowingly, and intelligently with full understanding and appreciation of the consequences. **Machibroda v. United States** 368 U.S. 487, 493, 182 S. Ct. 510, 513, 7 L.Ed.2d. 473 (1962).

E. When a Party has changed the Law relied on, a Stipulation based on the Remedies relied on should be voided

Pursuant to **Logan, supra**, p. 855, "Where a stipulation is entered into under mistake of law induced by the then existing state of the case law, a taxpayer is entitled to be relieved of the effect of the stipulation if no prejudice results." When the stipulation was signed on November 16, 1994, the State Bar's rules permitted a party to move to have costs reduced, waived, or modified. Transitional Rules of Procedure of the State Bar, Rule 462, in effect 1989-January 1,1995. Reply Brief, p.27-29.

Effective January 1, 1995, the State Bar revoked the provision. It passed a rule barring an accused questioning their salaries and benefits being imposed as costs and the amount it

awarded itself. Rule 282 of the Rule of Procedures of the State Bar of California, effective January 1, 1995 states, "A respondent may challenge the propriety under Business and Professions Code section 6086.10(b) of the inclusion of items in the certificates of costs, and/ or may challenge the computation of properly included costs, **provided, however, that this rule does not authorize a challenge to the State Bar's determination of `reasonable costs' under Business and Professions Code section 6086.10(b)(3).**" (emphasis added). Reply Brief, p.27-29.

Since the law relied on in existence on November 16, 1994 was revoked by the other party to the stipulation January 1, 1995 before it transmitted its recommendation for the California Supreme Court on January 11, 1995 for it to approve the stipulation to which the petitioner had withdrawn her consent on December 8, 1994, the stipulation should be voided as the remedy in existence to question the costs was revoked after the fact, and by the private party who is the financial beneficiary of its own rules barring all remedy for all accuseds within its private, partisan, and financially interested "Court."

CONCLUSION

A state system of attorney licensing that operates on layers of undisclosed private partisan and financial interests within private prosecutors, investigators, and judges does not provide confidence to the Public that lawyers are properly licensed.

The Petition should be entertained to address issues concerning due process requirements concerning fair and impartial adjudicators within a State Supreme Court, remedies to assure the same, entry of stipulated orders when consent has been withdrawn, and whether a stipulation should be voided for lack of an informed consent and when the law relied on was changed by the other party after the stipulation was executed but before it was approved.

RESPECTFULLY SUBMITTED,

Dated: April 4, 1995

JESSIE SHIOW-JIUAN HO
Petitioner Attorney *Pro Se*

Verification

I have read the foregoing Petition for Writ of Certiroari to the Supreme Court of the State of California and state it is made on my own personal knowledge, information, and belief, and this verification is executed this 4th day of April, at San Jose, California.

RESPECTFULLY SUBMITTED,

Dated: April 4, 1995

JESSIE SHIOW-JIUAN HO
Petitioner Attorney *Pro Se*

Supreme Court, U.S.
FILED

(2) No. 941638 APR 6 - 1995

OFFICE OF THE CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1994

JESSIE SHIOW-JIUAN HO

Petitioner

vs.

THE STATE BAR OF CALIFORNIA

Respondent

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

JESSIE SHIOW-JIUN HO
111 North Market Street, Suite 707
San Jose, Ca. 95113

1-408-279-1093

Petitioner Attorney *Pro Se*

66 pp

Table of Contents

A. California Supreme Court Order, filed March 16, 1995

B. State Statutes

C. Motion for Recusal of Members of California Supreme Court, filed February 27, 1995, California Supreme Court

D. Verified Petition for Review and Application for a Stay filed January 26, 1995, California Supreme Court

S044354

SBC 93-0-14171

IN THE SUPREME COURT OF CALIFORNIA

F I L E D
SUPREME COURT
FILED
MAR I 6 1995
Robert Wandruff Clerk
P. QUINN, DEPUTY

IN RE JESSIE SHIOW-JIUAN HO ON DISCIPLINE

Petition for writ of review, application for stay, and motion for recusal are denied.

It is ordered that Jessie Shiow-Jiuan Ho be suspended from the practice of law for one year, that execution of suspension be stayed, and that she be placed on probation for two years on condition that she be actually suspended for 45 days. She is also ordered to comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Regarding Stipulation filed November 21, 1994. It Is further ordered that she take and pass the California

Professional Responsibility Examination within one year after the effective date of this order. (See Segretti v. State Bar (1976) 15 Cal.3d 878, 891, fn. 8.) Costs are awarded to the State Bar and shall be added to and become part of the membership fee for the next calendar year. (Business and Professions Code section 6140.7.)

(unreadable)

_____

Acting Chief Justice

State Statutes

THE STATE BAR ACT

California Business and Professions Code

Sec. 6001. STATE BAR; PERPETUAL SUCCESSION; SEAL; REVENUE; POWERS; LAWS APPLICABLE

The State Bar of California is a public corporation. It is hereinafter designated as the State Bar.. . .No law of this state restricting, or prescribing a mode of procedure for the exercise of powers of state public bodies or state agencies, or classes thereof, including, but not by way of limitation, the provisions contained in Division 3 (commencing with section 11000), Division 4 (commencing with section 16100), and Part 1(commencing with section 18000) and Part 2 (commencing with section 18500) of Division 5, of Title 2 of the Government Code, shall be applicable to the State Bar, unless the legislature expressly so declares. (Origin: State Bar Act, sec. 2. added by Stats. 1939, ch 34. Amended by Stats. 1957, ch. 1526; Stats. 978, ch. 380; Stats. 1988, ch. 1149.)

Sec. 6079.1 STATE BAR COURT HEARING JUDGES

(a) The Supreme Court shall appoint a presiding judge of the State Bar Court and no fewer than seven hearing judges, and any additional hearing judges as may be authorized by the Legislature, to efficiently decide any and all regulatory matters pending before the Hearing Department of the State Bar Court. . .

(c) The board shall screen and rate all applicants for appointment or reappointment as a State Bar Court judge, and submit its nominations to the Supreme Court, unless otherwise directed by the Supreme Court. . .

(d) For judges appointed pursuant to this section or Section 6086.65, the board shall fix and pay reasonable compensation and

expenses and provide adequate supporting staff and facilities.

Sec. 6079.5 CHIEF TRIAL COUNSEL; APPOINTMENT; TERM; QUALIFICATIONS

(a) The board shall appoint a lawyer admitted to practice in California to serve as chief trial counsel. . .

Sec. 6086.5 STATE BAR COURT; ESTABLISHMENT; POWERS; RULES

The board of governors shall establish a State Bar Court, to act in its place and stead in the determination of disciplinary and reinstatement proceedings and proceedings pursuant to subdivisions (b) and (c) of section 6007 to the extent provided by rules adopted by the board of governors pursuant to this chapter.

. .

Sec. 6086.10 PAYMENT OF COSTS OF DISCIPLINARY PROCEEDINGS

(a) Any order imposing a public reproval on a member of the State Bar shall include a direction that the member shall pay costs. In any order imposing discipline, or accepting a resignation with a disciplinary matter pending, the Supreme Court shall include a direction that the member shall pay costs.

(b) The costs required to be imposed pursuant to this section include all of the following:

(1) The actual expense incurred by the State bar for the original and copies of any reporter's transcript of the State Bar proceedings, and any fee paid for the services of the reporter.

(2) All expenses paid by the State Bar which would qualify as taxable costs recoverable in civil proceedings.

(3) The charges determined by the State Bar to be "reasonable costs" of investigation, hearing, and review. These

amounts shall serve to defray the costs, other than fees for the services of attorneys or experts, of the State bar in the preparation or hearing of disciplinary proceedings, and costs incurred in the administrative processing of the disciplinary proceedings and in the administration of the client security fund.

. . .

(d) In the event an attorney is exonerated of all charges following a formal hearing, he or she is entitled to reimbursement from the State bar in the amount determined by the State bar to be the reasonable expenses, other than fees for attorneys or experts , of preparation for the hearing. (Added by Stats. 1986, ch. 662.)

Section 6140.7 DISCIPLINARY COSTS ADDED to MEMBERSHIP FEE

Costs assessed against a publicly reproved or suspended member shall be added to and become a part of the membership fee of the member, for the next calendar year. Costs unpaid by a member who resigns with disciplinary charges pending or by a member who is suspended of disbarred shall be paid as a condition of reinstatement of membership.

JESSIE SHIOW-JIUAN HO
111 North Market Street, Suite 707
San Jose, Ca. 95113

1-408-279-1093

Petitioner Attorney *Pro Se*

CALIFORNIA SUPREME COURT
FILED
FEB. 27, 1995
ROBERT WANDRUFF
CLERK DEPUTY

THE SUPREME COURT OF THE STATE OF CALIFORNIA

In the Matter of	Docket No. S44354 State Bar Court Case No. 93-0-14171
JESSIE SHIOW-JIUAN HO No. 142844 A Member of the State Bar	**Motion for Recusal of Members of California Supreme Court**

Now comes the Petitioner, Jessie Shiow-Jiuan Ho, and respectfully moves for this Court, and its members, to recuse itself from hearing and determining whether it should sign a proposed stipulated order recommended by this Court's appointee to a party when the other party, the Petitioner, has withdrawn her

consent thereto prior to this Court's approval , due to undisclosed conflicts of interest within this Court, the prosecutor, its judges, and its State Bar Court.

Petitioner requests this Court forbear affixing its signature to such proposed stipulated order and issue a ruling first on this motion for recusal, so as to provide the Petitioner with a minimum thereafter of two weeks to request, if this Court declines to recuse itself or assign a Court of Appeals, a federal court hear and determine whether this Court's affixing its signature to such a proposed stipulation as an order offends the principles of due process of law concerning a fair and impartial adjudicator.

This motion is based on this Motion, the attached Points and Authorities, the files, and the records, and judicial notice of the State Bar Court statutes and Rules of Court.

RESPECTFULLY SUBMITTED

Dated: February 24, 1995

JESSIE SHIOW-JIUAN HO
Petitioner Attorney *Pro Se*

JESSIE SHIOW-JIUN HO
111 North Market Street, Suite 707
San Jose, Ca. 95113

1-408-279-1093

Petitioner Attorney *Pro Se*

THE SUPREME COURT OF THE STATE OF CALIFORNIA

In the Matter of	Docket No. S44354 State Bar Court Case No. 93-0-14171
JESSIE SHIOW-JIUAN HO No. 142844 A Member of the State Bar	**Points and Authorities in Support of Motion for Recusal of Members of California Supreme Court**

I.

Facts

The issue presented is whether this Court, or its members, should or may affix its signature to a proposed order

recommended by its appointee to the prosecuting party, based on a stipulation to which consent was withdrawn upon discovery by the Petitioner of a number of conflicts of interest of this Court, its appointees, the prosecutor, and the State Bar Court created by this Court with the prosecuting party.

References to "section(s)" refers to sections of the California Business and Professions Code. References to the "State Bar" refers to the State Bar of California. Petitioner incorporates by reference, as if set forth herein in full, the grounds of recusal which are set forth in her Petition appearing at pages 1-5.

II. The Risk of Bias is Intolerably High when a Court is a Partisan for a Party

When the risk of unfairness is intolerably high, a judge must be recused from a case. **Withrow v. Larkin** 421 U.S. at 58, 95 S. Ct. at 1470. While a judge is obligated to be unswayed by partisan interests, when he occupies a role as a partisan for a party and/ or on the issues presented by a party, he is disqualified to sit on a case as the risk of bias is intolerably high. California and American Bar Association Judicial Codes of Conduct, Canon

3(A)(1), Canons 3C(1)(a), (1)(c), 3C(3)(c). A judge who is an active participant in the affairs of a party possesses a"financial interest," as defined by the California and American Bar Association Judicial Codes of Conduct, Canon 3 C(3)(c) while Canon 3C(1)(c) requires a judge to disqualify himself when "he has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding."

A. Active Participation in the Affairs of the Prosecuting Party disqualifies the California Supreme Court and its members

Pursuant to **Ward v. Village of Monroeville** 409 U.S. 57, 93 S. Ct. 80, 34 L. Ed. 2d. 267 (1972), "the court dealt with the issue of whether trial before a mayor who also had executive responsibilities for the village budget and finances was consistent with the guarantees of the due process clause when the revenue produced from the mayor's court provided a substantial portion of village funds. The court once noted that in **Tumey [v. Ohio** 273 U.S. at 532, 47 S. Ct. at 444] the fact that the mayor.... shared directly in the fees and costs did not define the limits of

the principle." 409 U.S.. at 60, 93 S. Ct. at 83. Rather the court reiterated, 'the test is whether the mayor's situation is one which 'would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clean, and true between the State and the accused....Id, quoting **Tumey v. Ohio, supra,** 273 U.S. at 532, 47 S. Ct. at 444. The court held that such 'possible temptation might exist, even in the absence of a direct, personal pecuniary interest on the part of the adjudicator, when his 'executive responsibilities for village finances may make him partisan to maintain the high level of contribution from the mayor's court.' 409 U.S. at 60, 93 S. Ct. at 83, as presented in **Matter of Ross,** 656 P. 2d. 832, 99 Nev.1 (Nev. 1983).

An executive role concerning maintaining monies coming in from guilty adjudications does not define the principle, as the Codes of Judicial Conduct recognize. Active participation in the affairs of a party is a financial interest in a party. California and American Bar Association Judicial Codes of Conduct, Canon

3(A)(1), Canons 3C(1)(a), (1)(c), 3C(3)(c). This makes sense. A judge who actively participates in a party's affairs, in making a judgement for it, will be saving it monies or awarding it monies. In this Court's case, it awards the State Bar party monies by awarding costs to the State Bar, which are, in fact, the salaries and benefits of its appointees to the State Bar party and those of their co-employees, plus ordering probation terms which obligates the other party to pay for other programs administered by the party to which this Court has appointed employees, some of which this Court's appointees directly participate in, such as the Client Security Fund of the State Bar of California. Sections 6079.1, 6086.65, 6140.5, 6086.10(a)(b)(c).

As the Codes of Conduct emphasize, "financial interest" in a party is not limited to a judge putting money in his own pocket. It includes giving, granting, awarding judgments to a party with whom the judge actively participates, since it is assumed that every judgment carries with it a financial saving, cost, or aspect to the party in whose favor a judgment is awarded. That is not an incorrect assumption, since this Court's

orders denying all petitions of all accuseds always order monies paid to the State Bar party which include recoupment of the salaries and benefits of this Court's appointees to their privately financed State Bar employer. 3,091 attorneys have been summarily disbarred and suspended by this Court since January 1, 1989 with all orders ordering them to pay this Court's appointees' salaries and benefits as claimed "Costs," without disclosure this Court's award of "Costs" is not "costs," but the salaries and benefits of this Court's appointees to a party and their co-employees.

The United States Supreme Court in **Liljeberg v. Health Services Acquisition Corp.** 486 U.S. 847, 108 S. Ct. 2194, 100 L. Ed. 2d. 855(1988) held that a judge who was on the Board of a College, even though the College was not a party to the action, when the College was a financial beneficiary of the judgement, was disqualified under the objective reasonable person test of recusal which applies to the disqualification of both state and federal judges. See **Aetna Life Insurance Co. v. La Voie** 475 U.S. 813, 89 L.Ed. 823, 106 S. Ct. 1580 (1986). Thus, even if

a financial beneficiary of a judgment is not a party, a judge is disqualified when he has an extrajudicial relationship with a financial beneficiary of its orders. The Judicial Codes have held that an active participant in the affairs of a party is similar to a Board member or director in requiring a judge's disqualification for direct involvement with a party. California and American Bar Association Judicial Codes of Conduct, Canon 3(A)(1), Canons 3C(1)(a), (1)(c), 3C(3)(c). **Liljeberg, supra**, makes clear that the involvement may be with a financial beneficiary of an order and is not limited to direct involvement with the parties. This Court's active involvement with the State Bar prosecuting party includes it appointing employees to it; appointing ten employees to it who require a minimum of one million dollars a year in base salaries; selecting, interviewing and choosing its appointees from a list exclusively provided by the prosecuting party; appointing employees to a prosecuting party to sit as "Judges;" appointing employees to a prosecuting party to sit as Judges to a private attorney disciplinary Court the prosecuting party runs; overseeing the competence and ethics of its appointees to the

prosecuting party; removing, reappointing, and selecting additional employees to the prosecuting party to sit as judges to its State Bar Court. Sections 6079.1, 6079.5, 6086.65, Ca. Rules of Court, Rule 961. This is a substantial record of active involvement in the prosecuting party's affairs by the members of this Court for over five years.

By using the adjudicative role the members of this Court occupy to find guilt of professional misconduct of the State's attorneys, this Court aggrandizes and assists in the financing of the salaries, benefits, programs, staff, offices, housing, and perks of this Court's appointees and their co-employees by imposing the salaries and benefits of its appointees and their co-employees against each adjudged guilty attorney as claimed "costs," and in ordering attorneys to pay for and participate in other programs run by the employer of its appointees as probationary terms in order for the attorney to retain his license to practice law. Sections 6086.10(b), 6140.5. The adjudicative role enhances and aggrandizes the executive role the members of this Court occupy for a private prosecuting party. The financial beneficiary of its

disbarment and suspension orders is the party with whom the members of this Court have an active involvement in a non-judicial role, similar to the situation prohibited in **Liljeberg, supra.**

Aetna, supra, makes clear that the state standard of recusal used by this Court and cited in **Lebbos v. State Bar of California** 53 Cal.3d. 37, 278 Cal. Rptr. 845, 806 P.2d. 317 (1991), footnote 1, as a rationale for its sitting on over 4,000 cases involving the State Bar, while it has appointed employees to it since 1989, has been overruled by a requirement that the California Supreme Court comply with an objective standard of recusal and not continue to use a subjective standard which permits each justice to determine his or her own bias . In **Aetna, supra,** the United States Supreme Court made clear that a direct, personal, substantial pecuniary interest in a State Supreme Court Justice is not required for a State Supreme Court Justice to be required to recuse himself. As stated in **Aetna, supra,** at 822, "No judge `can be a judge in his own case [or be] permitted to try cases where he has an interest in the outcome." **In re:**

Murchison 349 U.S. 133, 136 (1955).....what degree or kind of interest is sufficient to disqualify a judge from sitting 'cannot be defined with precision.' *Ibid.* None-the-less, a reasonable formulation of the issue is whether the `situation is one `which would offer a possible temptation to the average. judge to ... lead him not to hold the balance nice, clear and true.' **Ward v. Village of Monroeville**, supra, at 60. " "...Justice must satisfy the appearance of Justice." **Aetna, supra,** p. 825, quoting **In re: Murchison** 349 U.S. at 136.

The United States Supreme Court has stated that the process is to"examine what factors might constitute an interest in the outcome of this case that would bear on recusal. " **Aetna, supra,** p. 822. On information and belief, members of this Court in 1988 met with officials and employees of the prosecuting party, the State Bar of California, without disclosure to any accuseds. On information and belief, members of this Court from 1988 through to the present have met with and had conversations with officials and employees of the prosecuting party, the State Bar of California, to which no accused has been

privy and to which this Court has made no disclosure to any accused. Those meetings and conversations concerned a commitment by the members of this Court to aid and assist the State Bar prosecuting party in controlling and taking over attorney discipline from this Court so as to permit this Court to control its workload. No accused was ever apprised of any of these con[illegible]ions, commitments, or *ex parte* collaborations by and between the members of this Court and a party. In 1988 and 1989, the members of this Court had *ex parte* communications with the State Bar party which it never disclosed to any accused. Those communications concerned requests from the prosecuting party for this Court to appoint employees to it to be "judges" to its State Bar Court to replace this Court issuing disbarment or suspension orders on the state's attorneys. This Court, as recent publicity indicates, continues to have *ex parte* communications and conversations and meetings with the prosecuting party without any disclosure or notice to any accused. On information and belief, for over six years this Court has had *ex parte* communications with the prosecuting party concerning the merits

of the constitutional issues presented by accuseds concerning the recusal of this Court and of the State Bar and its "judges" appointed by this court and concerning the unconstitutionality of the State Bar Court attorney licensing system.

As the federal court records indicate, which this Court has not disclosed to this Petitioner or any other accused, this court is a personal co-defendant with the prosecuting party in six federal lawsuits now pending concerning its removal from State Bar cases, which suits request personal monetary damages against the members of this Court for its claimed conspiracy with the State Bar private prosecuting party to disbar and suspend attorneys so as to financially benefit the employer of this Court's private appointees. Said suits plead, which is unrefuted in the court records, that this Court has a prior involvement with the prosecuting party, has *ex parte* communications with that party, has an extrajudicial involvement with the prosecuting party in reviewing its nominees to be "Judges" to its State Bar Court and in interviewing, selecting, approving, swearing in appointees to the prosecuting party in 1989 and 1993 as well as overseeing

them from 1989 through 1995, that this Court's appointees require over one million dollars a year for their private salaries as employees of the prosecuting party, and this Court has awarded its appointees' employer over fourteen million dollars in monies without disclosure to any of over 3,091 accuseds that the taking of the 3,091 attorneys' licenses would benefit the prosecuting party employer of this Court's appointees by over fourteen million dollars from the takings of accuseds' licenses to practice law. Hirsh v. Justices et. al, docket no. 94 55240, Server v. Justices et. al, docket no. 94 55250, Perry v. Justices et. al., docket no. 94 55507, Espinoza v. Justices et. al, docket no. 94 56335, Gupton v. Justices of the California Supreme Court, Eastern District Federal Court, Case no. 94-1495 GEB JM, and Grunwald v. Justices of the United States Supreme Court, United States Supreme Court, filed February 14, 1994, docket no. pending.

Since this Court superseded the state statute permitting access to accuseds to the State Court of Appeals concerning cases concerning the State Bar party in 1990 by passing rules of court, which were recommended *ex parte* by the prosecuting to

this Court and which were prohibited public comment, which rules prohibit access to any other court and reserve access to this Court alone, when it appointed employees to the State Bar prosecuting party in 1989, and, this permits this Court to review its appointees' recommendations against each accused and awards its appointees' monies from the takings of each accused's license to practice law, this act alone appears to confirm that a private conspiracy with the prosecuting party to disbar and suspend the State's attorneys to obtain monies for the employer of its appointees is a plausible explanation for the decisions of this Court for five years taking all accused's licenses to practice law. These facts raise a sufficient doubt in the mind of the average person on the street as to whether this Court could be impartial concerning an accused's case to compel this Court's recusal for cause. Section 6082, California Rules of Court, Rules 950-962.

That this court changed, at the *ex parte* request of the State Bar and without allowing public comment, from *de novo* review of recommendations of the State Bar to no review permitted to an accused in this Court's discretion, which

discretion it has exercised against over 3,091 accused attorneys since it appointed employees to the State Bar in 1989, is an additional indicia to the average person on the street that this Court is a biased adjudicator for the prosecuting party. Ca. Rules of Court, Rules 952, 954.

Appointing employees to a prosecuting party to be its Judges from a list exclusively provided by a prosecuting party is an additional indicia of bias for the prosecuting party which is unmistakable and which act was declared unconstitutional in a similar fact situation in **Wall v. American Optometric Association** 379 F. Supp. 175, affirmed 95 S. Ct. 166 (N.D. Ga. 1974), in which the United States Supreme Court denied certiorari.

Dealing with the specifics of the Petitioner's case, the State Bar in its reply has admitted it did not disclose the relevant facts about its financial interest, its State Bar Court, its judges, its money demands, its biased examinations, tests, and school, and the role of this Court for it and in providing it money from the Petitioner for this Court's appointees by this Court taking

licenses. Response brief, hereinafter referred to as RB. These admissions of non-disclosure are sufficient. The State Bar admits an accused may never file to set aside a stipulation within fifteen days as provided in its rules, as the State Bar never discloses until after the fifteen days to set aside has expired that the State Bar is demanding the attorney pay its prosecutors, investigators, and co-employee judges' salaries and benefits as claimed "costs," when there are no costs. The accused is never advised the judge is the private co-employee of the prosecutor and wants her salary paid too by the attorney. RB: 15:16. This admitted non-disclosure of the relevant facts concerning the financial interest of the prosecutor in recouping his salary and benefits of $309.00 and the salary and benefits of his co-employee investigator of $387.00 and of his undisclosed co-employee "judge" of $473.00, or a total of $1,517.00 for the salaries and benefits of the State Bar's employees is never disclosed before, with, or at the time the prosecutor influences and induces through omission of the relevant facts an accused to enter into a stipulation before charges are filed. P Exhibits B-5- B-7.

Heavy pressure, threats, and intimidations are applied to a naive young lawyer who is the victim of the professional fraud rings spawned by the State Bar's indifference to doing anything about them who prey on the new admittees and who successfully prey on them, because the State Bar has no interest in educating attorneys about these fraud rings as a prophylactic measure, since it makes money by finding guilt of the victimized attorneys instead and has a financial interest in making sure the fraud rings continue and prosper. That a state bar prosecutor defrauds with misrepresentations about his, his employer, and co-employees' financial and other interests and roles in a proceeding puts him in the same category as the fraud ring which already victimized the Petitioner and cost her thousands of dollars of her own money to voluntarily reimburse all persons harmed thereby.

The Petitioner, having been victimized once by a fraud ring has since educated herself, at her own expense, when her law school education and bar examination should have taught her, exactly how professional con artists operate. And the State Bar acts just like the professional con artist rings. It uses the "Hook,

Line, and Sinker" routine. The State Bar prosecutor hooks his victim by promising that the punishment shall be inconsequential if the attorney stipulates to some guilt. There shall be no publicity. There are no costs because the formal proceedings have not yet commenced and no formal charges have been filed. If the attorney does not stipulate, the attorney shall be subject to severe discipline for allowing herself to become the victim of a fraud ring, even when the attorney took all reasonable steps to prevent the harm, tried to get the records, close out the accounts, and ceased all involvement as soon as the attorney became aware that something was not right with the financing principles, and when the attorney has voluntarily paid out of her own funds all monies to clients and lien holders possibly harmed. The prosecutor says this is the easy way out. You committed gross professional misconduct (victims are not wrongdoers; they are the victims). After the "hook" is in the State Bar's victim, the State Bar runs out the line. Well, sign here and it will all be over. You have no more worries if you sign. There is no court appearance; don't worry about it. Put this behind you and

nothing else will happen. Then the "sinker." After the desired signature is obtained, the prosecutor gets his co-employee judge's signature, when he did not disclose the judge is his co-employee.

When the attorney starts to comply with the terms, she finds out there is a lot of money required to be paid to the State Bar which was not disclosed in the stipulation. Something is wrong here. She writes the judge to withhold acting on her signature. The judge ignores it. Then the attorney gets a copy of a transmittal to the State Supreme Court with a recommended order prepared by the State Bar for it to sign with "costs" awarded to the State Bar. But there is no State Bar order approving stipulation attached. Where is the order? But attached is the "sinker"- the State Bar wants its salaries and benefits paid for its prosecutor ($309.00), for the prosecutor's co-employee, the investigator ($387.00), and for its "judge" ($473.00) as claimed "Costs," when it has no costs. It wants a total of $1,517.70 for a transaction which consumed a minimum amount of time, and no more than two minutes of the judge's time, who *ex parte* signed the stipulation without a court appearance or

disclosure of her relationship with the prosecutor, the investigator, and their mutual desire to have their salaries and benefits paid by the Petitioner. Since no charges were yet filed, there was no time spent by the State Bar's "Court" on this matter as it never had anything before it to act upon. $473.00 as the salary of the judge for two minutes to sign a paper means that her housing, parking space, gold-plated chandeliers, oriental rugs, retirement plan, medical plan, perks, benefits, law clerks, research assistants, robes, books, seminars, vacations are all being charged against the Petitioner without disclosure, as the $473.00 equates to an hourly judge rate of $14,190 an hour. With "costs" now meaning $14,190 an hour for the State Bar's judge to its claimed Court, with an additional $309.00 minimum an hour for her co-employee prosecutor, and an additional minimum of $387.00 an hour for their mutual co-employee investigator who misinvestigated to find guilt to aggrandize his employer's purse at the Petitioner's expense, the clear undisclosed intent of the stipulation is clear.

The undisclosed goal of the stipulation is to bankrupt the

Petitioner by constantly extorting more and more monies from the Petitioner for the State Bar employees' salaries, benefits, and programs and set up the Petitioner with impossible terms, more and more proceedings, revocations, new terms, and each time ordering the Petitioner to pay the prosecuting party's judge $14,190 an hour until, as the Petitioner has learned occurs with stipulated State Bar dispositions, to prevent bankruptcy and insanity from the State Bar's harassment and money demands, the Petitioner is forced to resign or let herself be disbarred. This appears to be a professional scam the State Bar is operating so as to churn the admissions and discipline of the state's attorneys so as to financially benefit itself. This has the indicia of a "Hook, Line, and Sinker" professional con artist routine.

Since the State Bar on January 1, 1995 abolished the right of an attorney to contest the money demands for its employees' salaries as its claimed "Costs," but such a *pro forma* remedy was in existence as the consideration for the stipulation in 1994, the consideration for the stipulation has been unilaterally revoked by the State Bar party. This compels non-approval of its proposed

stipulated order for lack of consideration.[1]

Since this Court would be awarding $1,517.00 for the employer of its appointees, of which $473.00 is recoupment of the salary and benefits of its appointee to the prosecuting party for her salary and benefits in taking two minutes to put her name on a piece of paper, this Court, by sitting on this case, would be benefiting its own appointee to a party, just as it would be doing so if the monies went to the private employer of the wives or husbands of the members of this Court if it entered such an order without disclosure and waiver of its interest in the outcome.

III. The Risk of Bias is Intolerably High when a Court is a Partisan on the Issues

While a State Supreme Court Justice had on-going

---

[1] The State Bar changed its former rule 462 concerning procedure for relief from its claimed "costs" to a new rule which went into effect January 1, 1995, rule 282, which now bars relief from paying its salaries and benefits. The new rule states... "this rule does not authorize a challenge to the State Bar's determination of "reasonable costs" under Business and Professions Code section 6086.10(b)(3)..." No challenge is now permitted, such that the State Bar voided the consideration for the Petitioner's consent to the stipulation *ex parte* and unilaterally after the fact.

litigation with an insurance company, which was not a party to the judgment, the judgment involved application of a new issue concerning bad faith insurance practices, which "had the clear and immediate effect of enhancing both the legal status and the settlement value of his own case." This compelled the United States Supreme Court to void the judgment and order of the State Supreme Court. **Aetna, supra**, p. 824. When a judge sat as a one-man Grand jury and then sat on whether he would enforce his orders by way of contempt, he was disqualified as a partisan on his own issues. He wore two hats at the same time- one partisan and one adjudicative. **In re: Murchison, supra.** This Court created a State Bar Court with a private party. It did so by appointing its judges. It occupies an executive role for a party. It appoints, reappoints, removes, and oversees its appointee Judges to a party's claimed Court. Now the issue is whether this claimed Court is non-existent as an unconstitutional court, and whether non-disclosure to the Petitioner that this claimed Court is not a Court, but a private group of employees of a prosecuting party is presented as to whether such non-

disclosure warrants, among other factors, withdrawal of the Petitioner's consent to a stipulation entered by it and non-approval of a recommended order premised exclusively on such consent and non-disclosure. Since this Court is, similar to the Board in **Gibson v. Berryhill** 411 U.S. 564, 579, 93 S. Ct. 1689, 36 L. Ed. 2d. 488 (1973), one of the Commissioners on a Board in **Yamaha Motor Corp., U.S.A. v. Riney** 21 F.3d 793 (Eighth Cir. 1994), and the entire Commission in **United Church Etc. v. Medical Center Com'n** 689 F. 2d. 693 (Seventh Cir. 1982), a partisan about the issue of a State Bar Court and the underlying issues of the Petitioner's petition, it is disqualified to hear or entertain the Petitioner's cause.

CONCLUSION

Since this court has had an opportunity to recuse itself in this situation for over five years, and has summarily denied all petitions of accuseds and, on information and belief, has refused to rule on about five hundred recusal motions [2] raising these

---

2

On information and belief, this Petitioner is informed that the following attorneys have requested recusal of this Court

identical issues presented by accuseds, since the Petitioner's case does not involve approving guilt, but this Court's duty to forbear signing a recommended stipulated order when consent was withdrawn as soon as the Petitioner had notice of the first irregularity in the State Bar's representations and it is admitted by the State Bar that the Petitioner's consent to the stipulation was obtained through its admitted fraud and/ or non-disclosure, Petitioner requests that this Court issue a ruling on its recusal first so as to permit the Petitioner access to the federal court to hear and determine whether this Court should be permitted to review whether it may sign a proposed order concerning its interests in the prosecuting party or whether by reason of conflict of interest,

---

on the identical grounds, and this Court has summarily denied each Petition: Lebbos, supra. Attorneys Barry Ammon, Harold Rauch, John Rakus, Robert Philip McNamee, Ronald Berki, Raymond Dunn, Gary Coutin, John B. Gunn, G.G. Baumen, Kevin G. Gupton, Lucille Boston, Richard Travis, Stuart Hirsh, Harold Perry, Howard Johnson, Lawrence Bragg, Edmundo Espinoza. California Supreme Court, docket nos. S016222 (1990), S020774, S022888 (1991), S035214 (1993), S037448 (1993), S041593 (1994), S04178 (1994), docket no. S042461(1994), docket no. S042379 (1994), S042968 (1994), S044825 (1995), S043884 (1995).

this Court is foreclosed from such consideration and must forbear from signing such a proposed order for its appointee to the prosecuting party.

RESPECTFULLY SUBMITTED,

Dated: February 24 ,1995

JESSIE SHIOW-JIUAN HO
Petitioner Attorney *Pro Se*

Verification

I have read the foregoing Points and Authorities in support of Motion for Recusal of members of the California Supreme Court and state it is made on my own personal knowledge, information, and belief, and this verification is executed this 24th day of February at San Jose, California.

JESSIE SHIOW-JIUAN HO
Petitioner Attorney *Pro Se*

SUPREME COURT
FILED
JAN 26 1995
Robert Wandruff
Clerk Deputy

THE SUPREME COURT OF THE STATE OF CALIFORNIA

	) Docket No. S44354
In the Matter of	) State Bar Court Case No. 93-0-14171
JESSIE SHIOW-JIUAN HO	) **Verified Petition For Review and Application for a Stay**
	) Ca. Rules of Court, Rule 952(d)
No. 142844 A Member of the State Bar	)

JESSIE S. HO, ESQ.
111 North Market Street, Suite 707
San Jose, Ca. 95113

1-408-279-1093

Respondent Attorney *Pro Se*

Table of Contents

A. Necessity of State Court Appellate Ruling 4

B. Important Questions of Constitutional Law 4

1. A Partisan State Supreme Court and Request for Assignment to State Court of Appeals 5

2. Petitioner's Withdrawal of Consent prior to Approval by the State Supreme Court voids the recommended Order 6

4. By Reason of the Lack of Informed Consent, the Stipulated Plea Should be Voided 10

5. The Court may not Enter an Award of Costs When There was no Prior Service on the Petitioner..... 13

Conclusion 14

Declaration of Counsel 15

Table of Authorities

Cases

Aetna Life Insurance Company v. LaVoie 475 U.S. 813, 89 L.Ed. 823, 106 S.Ct. 1580 (1986).....6
Bell v. Superior Court (1906) 150 Cal. 31, 35-37.....13
Brady v. United States 397 U.S. 742, 753, 90 S. Ct. 1463, 1472, 25 L. Ed. 747 (1970).....11
Boykin v. Alabama 395 U.S. 238, 242-244, 89 S. Ct. 1709, 23 L. Ed.2d. 274 (1969).....11
Coast Electric Service, Inc. v. Jensen (1931) 111 Cal. App. 124, 388-389.....13
Evans v. Raines 800 F. 2d. 884, 885 (Ninth Cir. 1986).....11
Fuentes v. Shevin 407 U.S. 67 (1972).....13
In the Matter of Res B (Review Dept. 1991), 1 Cal. State Bar Reporter 424.....4
Johnson v. Superior Court 121 Cal.3d. 115, 116, 175 C.R. 272.....10
Johnson v. Zerbst 304 U.S.458,464, 58 S. Ct.1019, 1023, 82 L.E d. 1461 (1938).....11
Kercheval v. United States 274 U.S. 220,223, 47 S. Ct. 582, 583, 71 L. Ed. 1009 (1927).....10
Liljeberg v. Health Services Acquisition Corp. (1988) 486 U.S. 847, 108 S. Ct. 2194, 100 L. Ed. 2d. 855.....10
Machibroda v. United States 368 U.S. 487, 182 S. Ct. 510, 513, 7 L. Ed.2d. 473 (1962).....11
McDowell v. Orsini (1976) 54 Cal. App.3d. 951, 960, 127 Cal. Rptr. 285.....10
Moran v. Burbine 475 U.S. 412, 421 106 S. Ct. 1135, 1141, 89 L. Ed.2d. 410 (1986).....7,11
Moran v. Godinez 972 F. 2d. 263 (Ninth Cir. 1992), at p. 266.....11
Mosk v. Superior Court of Sacramento County 159 Cal. Rptr. 494, 601 P. 3d. 1030, 25 C.3d 474 (1979).....6
Nagel v. P & M Distributors Inc. (1969) 273 Cal. App. 2d. 176, 179-182.....13

People v. Hill (1974) 12 C. 3d. 731, 767, 117 C.R. 393, 528 P.2d.1.....10
Riddell v. Harrell (1886) 71 Cal. 254, 261.....13
Von Moltke v. Gillies 332 U.S. 708, 68 S. Ct. 316, 92 L. Ed. 309 (1948).....13
Sniadach v. Family Finance Corp. 395 U.S. 337 (1969).....13
Thompson v. Cook (1942) 20 Cal. 2d. 564.....13

California Constitution

Article 3, section 3.5.....4
Article 6, section 1.....6
Article 6, section 9.....6
Article 6, section 12.....6

California Business and Professions Code

Section 6001.....7
Section 6079.1.....7
Section 6079.5.....7
Section 6086.5.....7
Section 6086.10.....7,8
Section 6086.10(b).....4
Section 6086.65.....7
Section 6140 et. seq.....6
Section 6140.7.....8

California Rules of Court

Rule 951(b).....9
Rule 952(d).....1,4
Rule 961.....4

State Bar Rules of Procedure

Rule 461.....5
Rule 462.....8

THE SUPREME COURT OF THE STATE OF CALIFORNIA

	)	Docket No. S44354
	)	
In the Matter of	)	State Bar Court Case No.
	)	93-0-14171
	)	
JESSIE SHIOW-JIUAN HO	)	**Verified Petition for**
	)	**Review and Application**
	)	**For a Stay**
	)	
	)	Ca. Rules of Court, Rule
	)	952(c)
	)	
No. 142844	)	
A Member of the State Bar	)	
	)	

The Petitioner, JESSIE SHIOW-JIUAN HO, an attorney at law, petitions for review of an order approving stipulation of the parties signed by State Bar Court Judge Jennifer Gee, an appointee of the members of this Court. Said stipulation was entered into before a Notice to Show Cause issued. Petitioner withdrew her consent to the stipulation by sending a letter to the Honorable Jennifer Gee and this Court on December 8, 1994 and

again by certified mail, return receipt sent on December 12, 1994, containing the Petitioner's withdrawal of her consent to said stipulation. The return receipts indicate that this Court received the Petitioner's withdrawal of consent to the stipulation on December 13, 1994 and the Honorable Jennifer Gee received the withdrawal of consent to the stipulation on December 14, 1994. Exhibit A-1 through A-4. The Petitioner did not hear anything further and assumed her withdrawal of consent to the stipulation had been acted upon.

Notwithstanding the withdrawal of consent and acknowledged receipt of the same December 14, 1994, the State Bar on January 11, 1995 sent a transmittal to the California Supreme Court requesting it approve its proposed order and award it monies from the Petitioner in the amount of $1,517.70 as "costs", but it did not send to the Petitioner any order approving stipulation. Exhibit B. The Transmittal of State Bar Court Recommendation sent to the Petitioner by mail on January 11, 1995 contained solely the two page Transmittal of Recommendation, Exhibits B-1 and B-2; Proposed Order on

California Supreme Court caption approving stipulation which was unsigned, Exhibit B-3; Declaration of Service of Transmittal of Recommendation dated November 16, 1994 and Proposed Order, Exhibit B-4; Certificate of [State Bar] Costs of $1,517.70 filed January 11, 1995, Exhibit B-5; Certificate of Costs of $1,044.70 Submitted by the Office of Investigation and the Office of Trials of the State Bar of California, Exhibit B-6; Statement of Costs of $473.00 of Office of the State Bar Court of the State Bar of California, Exhibit B-7, and Declaration of Service of Certificate of Costs and Accompanying Costs filed on January 11, 1995, Exhibit B-8. There was no order. Exhibit B-1 through Exhibit B-8.

This Petition for Review is to request the proposed order not be approved, inasmuch as a party thereto, the Petitioner, withdrew her consent to the stipulation a month before the State Bar's transmittal to this Court. Said withdrawal of consent is based on the undisclosed conflicts of interest, including financial interest, within the signatory judge Gee and her co-employee prosecutors and investigators, whereby the Petitioner, in entering

into the stipulation, could not have provided and did not provide an informed consent. Parties are induced to enter into stipulated guilty pleas without disclosure of the role of the judge as an employee of a prosecuting party, whose appointment and position is dependent on finding accuseds guilty so as to make monies for his or her private prosecuting party employer, with said stipulations never disclosing the amount of monies required to pay the judge and his co-employees demanded by them of the accused. The accused never learns the truth until after he or she has signed an approved stipulation and later is advised the judge signing it demands the accused pay him $473.00 for signing it, with another $1,300 plus demanded by the prosecutor and co-employee investigator to be paid to them for their salaries and benefits as well, non-payment of which results in a taking of the accused's license to practice law by these co-employees desiring to be paid by the accused. Until January 16, 1995, when the Petitioner received the January 11, 1995 transmittal, she had no idea that "costs" were not "costs," but were and are the salaries and benefits of the judge and his co-employees. This was never

disclosed prior to or at the time of entering the stipulation. The chart of the 3,091 disbarments and suspensions and fourteen million dollar financial interest of the State Bar and its State Bar Court in procuring stipulated guilty dispositions is attached as Exhibit C, which information was never disclosed to the Petitioner.

Inasmuch as the stipulation provides that, "The Supreme Court must enter an order effectuating the terms and conditions of this stipulation before any stipulation, actual or stayed, will be effective," Stip, p. 4, Effect of this Stipulation, item 4, and Petitioner has withdrawn her consent to said stipulation prior to this Court's approval, Petitioner respectfully requests that this Court forebear from approving and signing the State Bar's proposed order.

A. Necessity of State Court Appellate Ruling

Pursuant to Article 3, section 3.5 of the California Constitution, the State Bar Court of the State Bar of California admits it is constitutionally prohibited from deciding the constitutional issues presented. As stated by it *In the Matter of*

Res B (Review Dept. 1991), 1 Cal. State Bar Reporter 424, "As a *sui generis* arm of the Supreme Court, the State Bar Court may recommend the Supreme Court declare a statute unconstitutional, but may only interpret existing law."

B. Important Questions of Constitutional Law

This Petition is filed pursuant to California Rules of Court, Rule 952(d) concerning review of decisions of the State Bar Court. This Petition is filed as the legal questions concern 1) whether an order of an employee of a prosecuting party based on a stipulated disposition between the parties must not be approved by a constitutional court based on the withdrawal of consent by a party prior to approval, and 2) whether such withholding of approval is required by reason of the lack of an informed consent by a party to the stipulation arising from lack of disclosure of a number of conflicts of interest of the judge and prosecutor approving the stipulation, including the nature and extent of her financial interest for her employer in securing it and the judge's status as an employee of the prosecuting party, and 3) whether the lack of disclosure of the $1,517.70 demanded to be

paid in the stipulation or State Bar Court order approving stipulation prevents an entry of an order for said sum later disclosed and voids the stipulation and State Bar Court order approving it.

As the fiduciary in charge of its appointees to the prosecuting party, this Court has a duality of role which renders it difficult for it to sit impartially concerning non-approval of the stipulation and granting relief to the Petitioner. Ca. Rules of Court, Rule 961. The funds obtained from the Petitioner of initially the $1,517.70 demanded in the transmittal of November 16, 1994, Exhibits B-5, B-6, B-7, are available to be used by the prosecuting party to pay the salaries and benefits of this Court's appointees to the prosecuting party, including its appointee Judge Gee. Further monies would be available by it permitting its appointees to find a revocation of probation and imposing additional monies to reimburse the salaries and benefits of its private appointees and to fund their law clerks, offices, research assistants, medical, dental, and retirement plans since administrative costs to recoup reasonable expenses of

investigation, hearing, and review are assessed and collected for this Court's appointees private employer for each additional proceeding. Ca. Business and Professions Code section 6086.10(b). Therefore, an important issue of law is whether, as a partisan for the prosecuting party and its State Bar Court, this Court is required to disqualify itself from passing on this Petition and, pursuant to Article 6, section 12 of the California Constitution, assign it for hearing to a State Court of Appeals.

1. A Partisan State Supreme Court and Request for Assignment to State Court of Appeals

The issue presented is whether the California Supreme Court is and has been a partisan since January 1, 1989 for the prosecuting party, the State Bar of California, arising from its assumption of an executive role of appointing some of its employees, overseeing them, removing them, assisting the prosecuting party in creating its State Bar Court, and awarding them monies by finding guilt of accuseds, while simultaneously occupying an adjudicative role concerning the State Bar of California in finding guilt of accuseds. Since this issue involves the extrajudicial and personal roles assumed by the members of

this Court for a party appearing before them, and their possible personal liabilities to those harmed thereby, the Petitioner respectfully requests this Court recuse itself from deciding to review or reviewing the merits of this Petition and pursuant to the recusal criteria for State Supreme Court Justices established by the United States Supreme Court in Aetna Life Insurance Company v. LaVoie 475 U.S. 813, 89 L. Ed. 823, 106 S. Ct. 1580 (1986), and pursuant to Article 6, section 12 of the California Constitution and Mosk v. Superior Court of Sacramento County 159 Cal. Rptr. 494, 601 P. 3d. 1030, 25 C.3d. 474 (1979), assign this Petition to a State Court of Appeals.

2. Petitioner's Withdrawal of Consent prior to Approval by the State Supreme Court voids the recommended order

The Stipulation entered into between the Petitioner and the State Bar was entered into prior to the issuance of a Notice to Show Cause. Petitioner could not have known of the defects in the State Bar Court system to which she was submitting herself by entering into such a stipulation with its employees as the

principals within the State Bar failed to disclose the relevant facts to the Petitioner. The Stipulation face sheet states it is being submitted to The State Bar Court of the State Bar of California. Stip, Pg.1. It states it is being submitted for approval to the California Supreme Court following its approval by the State Bar Court, and that "The Supreme Court must enter an order effectuating the terms and conditions of this stipulation before any stipulation, actual or stayed, will be effective." Stip, p. 4, Effect of this Stipulation, item 4. These terms lead the signatory party to believe the State Bar Court is part of the constitutional courts within the State, since its transmits its proposed orders directly to the California Supreme Court for its approval, and no order is effective until approved by the California Supreme Court.

There is no disclosure that the State Bar Court is not a "Court." Article 6, sections 1, 9, Ca. Constitution. There is no disclosure that it is not publicly funded. California Business and Professions Code section 6140 et. seq. There is no disclosure that the State Bar Court is operated from funds, *inter alia*, obtained by finding accuseds guilty. California Business and

Professions Code section 6086.10. There is no disclosure the State Bar Court is a private entity created and run by the prosecuting party, the State Bar of California. There is no disclosure that the State Bar Court, while it calls itself a "Court," does not conform to the rules of evidence or of procedure applicable to the constitutional courts as its principal and owner, the State Bar, has exempted itself from State law under Ca. Business and Professions Code section 6001. There is no disclosure that the State Bar Court judges within this entity are the private co-employees of the prosecutors and their investigators. Ca. Business and Professions Code sections 6079.1, 6079.5, 6086.65. There is no disclosure that the one year of stayed suspension and of probation is supervised and determined, as well as its revocation by an employee of the prosecuting party who obtains money for his private employer by finding cause to revoke the probation of the signatory accused. Ca. Business and Professions Code sections 6079.1, 6079.5, 6086.5, 6086.65, 6086.10. There is no disclosure that the forty five day actual suspension provided for shall not and never ceases

until the Petitioner pays the judge, her co-employee prosecutor and investigators undisclosed monies they will be awarding themselves later, thus amounting to a de facto disbarment for non-payment of salaries and benefits of the judge and his co-employees within the prosecuting party. Stip., pg. 21, cond. 110. Ca. Business and Professions Code section 6086.10(a).

In a valid plea bargained disposition, all relevant facts and consequences are required to be disclosed prior to its entry by the prosecutor and approval by a constitutional court. An accused must have "full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." Moran v. Burbine 475 U.S. 412, 421 106 S. Ct. 1135, 1141, 89 L. Ed.2d. 410 (1986). This must also apply to the State Bar Court system, as it also is a rule applicable to civil proceedings. The Stipulation states, "In order to accomplish the objectives of this stipulation, the parties waive all State Bar Court procedures regarding formal discovery as well as hearing or trial." Stip, pg. 4, D. It then states, "the agreed disposition is eligible for costs to be awarded to the State Bar. (Bus. & Prof. Code s. 6086.10

and 6140.7). Petitioner has been notified of his or her duty to pay costs. The amount of costs assessed by the Office of Trial Counsel will be disclosed in a separate cost certificate submitted following approval of this stipulation by a hearing judge [of the State Bar Court]. The amount of costs assessed by the State Bar Court will be disclosed in a separate cost certificate submitted upon finalization of this matter." Stip, Pg.4, item H1. The stipulation contains no disclosure of the amount of money required to be paid. It contains no disclosure that "costs" are not statutory costs, but the salaries and benefits of the State Bar employee investigators, prosecutors, and co-employee judges within its State Bar Court. It contains no disclosure of when the monies are to be paid. It contains no disclosure of any conditions to be attached to said payments of unidentified monies. The stipulation further states,"Waiver of Right to Petition for relief from Assessed Costs," Stip, Pg. 7, that "Respondent acknowledges that this Stipulation is a compromise of disputed allegations and that a petition for relief from costs pursuant to Transitional Rules of Procedure, rule 462, alleging special

circumstances or other good cause shall not be based upon the timing of this Stipulation, any aspects of the negotiation process in this case, nor the degree of discipline agreed upon by the parties hereto." It further states that, "That within one (1) year from the date on which the disciplinary order in this matter becomes effective, Respondent shall attend the State Bar Ethics School, which is held periodically at the State Bar of California... and shall take and pass the test given at the end of such session." Stip, p. 34, Attachment to Stipulation. There is no disclosure there is a fee required for said school. There is no disclosure that the fee is $100.00, and that the sums to be paid for it are paid to the prosecuting party, or that the examination given at the end of it is prepared, graded, and approved solely by the prosecuting party.

The stipulation further provides that,"It is further recommended that the California Supreme Court order Respondent to take and pass the California Professional Responsibility Examination administered by the Committee of Bar Examiners of the State Bar of California within one year of

the effective date of the order of the Supreme Court..." Stip., p.23, Further Recommendations. There is no disclosure that this examination is prepared, written, and graded by the prosecuting party. There is no disclosure the costs of said examination is $250.00. There is no disclosure those funds go to the prosecuting party. There is no disclosure the examination is a trick examination of a subjective nature requiring not a correct answer, but the "best" answer. There is no disclosure that there is a less than a thirty percent pass rate for said examination, and that each time it is required to be taken costs the attorney an additional $350.00 payable to the prosecuting party, and that failing this examination is grounds for revocation of probation and imposition of a one year actual suspension. There is no disclosure that the one year actual suspension may be imposed *ex parte*, without notice or hearing afforded to the Petitioner. Ca. Rules of Court, Rule 951(b). There is no disclosure that such an *ex parte* one year actual suspension may be imposed by an employee of the prosecuting party, sitting as a Judge in the State Bar Court, wherein she or he awards herself or himself, his co-

employee prosecutor and investigator additional monies for their salaries and benefits by revoking the stay and imposing an actual suspension. Ca. Business and Professions Code section 6086.10.

Until a few days after January 11, 1995, after the stipulation was signed and approved by the State Bar Court prior thereto, the Petitioner was never advised the State Bar Court judge was demanding she be paid $473.00 by the Petitioner for affixing her signature to the stipulation, or that the prosecutor was demanding that he be paid $309.00 by the Petitioner for handwriting inserts into a form stipulation and signing it, and that their mutual co-employee investigator was demanding $387.00 from the Petitioner for investigating this case so as to ensure a guilty recommendation issue, when no guilt could reasonably be found on the facts, and that unless the Petitioner paid these private co-employees for their salaries and benefits of a total of $1,517.00, which includes an unidentified claim of $348.70 in" other taxable costs," Exhibit B-1, she would be *ex parte* suspended for one year by one of them or that her forty five day actual suspension would never cease unless she paid them in full

the monies demanded by them. Exhibit B-5, B-6, B-7. It is in light of these non-disclosures of relevant conflicts of interest and financial interest of the principals, the Petitioner withdrew her consent to the stipulation on December 8, 1994. Exhibit A-1. Since the basis of the recommendation is a stipulation, to which consent was revoked by the signatory after learning the true facts after it was executed, this Court should not approve the recommendation, since the Petitioner withdrew consent to the stipulation prior to its approval by this Court. McDowell v. Orsini (1976) 54 Cal. App.3d. 951, 960, 127 Cal. Rptr. 285, Johnson v. Superior Court 121 Cal.3d. 115, 116, 175 C.R. 272, People v. Hill (1974) 12 C. 3d. 731, 767, 117 C.R. 393, 528 P.2d.1.

3. By Reason of the Lack of Informed Consent, the Stipulated Plea Should be Voided

There is no clause in the stipulation concerning the waiver of a constitutional right to a judicial proceeding or a disinterested judge or prosecutor. The United States Supreme Court has stated a guilty plea is more serious than a confession because it is tantamount to a conviction. Kercheval v. United States 274

U.S. 220,223, 47 S. Ct. 582, 583, 71 L. Ed. 1009 (1927). The United States Supreme Court has required that a guilty plea, like any surrender of fundamental constitutional rights, reflect the unfettered choice of the defendant. Boykin v. Alabama 395 U.S. 238, 242-244, 89 S. Ct. 1709, 1711-1713, 23 L. Ed.2d. 274 (1969). Courts have inquired as to whether the plea was made voluntarily, knowingly, and intelligently with full understanding and appreciation of the consequences. Machibroda v. United States 368 U.S. 487, 493, 182 S. Ct. 510, 513, 7 L. Ed.2d.. 473 (1962). The Courts must indulge in every reasonable presumption against waiver of constitutional rights. Evans v. Raines 800 F. 2d. 884, 885 (Ninth Cir. 1986). Voluntariness, knowledge, and intelligent waiver means the capacity for reasoned choice among the alternatives available. Moran v. Godinez 972 F. 2d. 263 (Ninth Cir. 1992), at p. 266. "... The relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must be made with full awareness of both the nature of the right

being abandoned and the consequences of the decision to abandon it." Moran v. Burbine 475 U.S. 412, 421 106 S. Ct. 1135, 1141, 89 L. Ed.2d. 410 (1986).

The totality of the circumstances is examined to determine if a knowing and intelligent relinquishment of rights has occurred. Johnson v. Zerbst 304 U.S.458,464, 58 S. Ct.1019, 1023, 82 L.E d. 1461 (1938). The standard of voluntariness of guilty pleas was adopted by the United States Supreme Court in Brady v. United States 397 U.S. 742, 753, 90 S. Ct. 1463, 1472, 25 L. Ed. 747 (1970) from Judge Tuttle of the Fifth Circuit, as follows:

> "A plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel, must stand unless induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business (e.g. bribes). 242 F. 2d. at page 115"

Misrepresentation or other impermissible conduct by state agents voids a guilty plea. Von Moltke v. Gillies 332 U.S. 708, 68 S. Ct. 316, 92 L. Ed. 309 (1948). The term "misrepresentation" means, "a false impression or account, the act

of misrepresenting which is defined as "to give a false impression or account of, either deliberately or unintentionally." The New Lexicon Webster's Dictionary of the English Language, "misrepresentation" at p. 639. The State Bar and its co-employee State Bar Court Judge Gee concede they concealed that they are co-employees, that they have a financial interest for their private employer in securing the stipulation without disclosure of their relationship as co-employees and of the monies payable to their mutual employer, and that they are permitted to *ex parte* revoke probation and impose a one year actual suspension, while being partisans and financially interested therein.

Since the misrepresentations or omissions of material facts strike at the core of the stipulation as the Petitioner would not have entered into it had she known the" conditions" required large money payments to the State Bar, the large money payments had to be paid off within the forty five day actual suspension period or else the Petitioner was *de facto* disbarred for non-payment of those sums without notice or hearing. The

Petitioner would not have entered into a stipulation had she known that the judge enforcing the stipulation and its conditions is the prosecutor's co-employee and financially interested in revoking the stayed suspension and imposing money awards for herself and her co-employee prosecutors, investigators, and judges, and his employer, and had the Petitioner been advised she would have no access to a neutral court of law by reason of the partisan role of the State Bar Court judges and the State Supreme Court for the prosecuting party. If an accused were told if he signs a paper for a guilty plea that he will not be permitted to have a neutral or a constitutional court of law review whether more punishment should be imposed for violation of its "conditions," and he will have to continue paying off the judge's private employer indefinitely and his co-employee prosecutors and investigators, no accused in his right mind would sign such a paper.

Since the waiver of constitutional rights was not knowing, intelligent, voluntary, but was based on the misrepresentation and omission of material facts by each layer involved, the stipulation

must be voided as being the product of an uninformed consent. In all events, entry of the order approving stipulation must be voided for lack of disclosure by Judge Gee of her relationship to the financial beneficiary of her order and the amount of financial interest therein under the reasoning of the United States Supreme Court in Liljeberg v. Health Services Acquisition Corp. (1988) 486 U.S. 847, 108 S. Ct. 2194, 100 L. Ed. 2d. 855.

4. The Court may not Enter an Award of Costs When There was no Prior Service on the Petitioner

The Stipulation which was approved by the State Bar Court judge by order approving stipulation did not contain a memorandum of costs. The Memorandum of Costs was not served until after January 11, 1995. Exhibit B-5 through B-8. An order may not issue for costs when there was no service of a cost memorandum. Riddell v. Harrell (1886) 71 Cal. 254, 261; Coast Electric Service, Inc. v. Jensen (1931) 111 Cal. App. 124, 388-389, c.f. Bell v. Superior Court (1906) 150 Cal. 31, 35-37. Since it was a substantial material omission of a known fact, the stipulation must be voided in its entirety for lack of consideration

and of disclosure. An order obtained without notice may be attacked at any time. Thompson v. Cook (1942) 20 Cal. 2d. 564, Nagel v. P & M Distributors Inc. (1969) 273 Cal. App. 2d. 176, 179-182, Sniadach v. Family Finance Corp. 395 U.S. 337 (1969), and Fuentes v. Shevin 407 U.S. 67 (1972).

Petitioner incorporates by reference, as if set forth herein in full, the attached Declaration of Counsel concerning the unavailability of a transcript due to no hearing having been conducted within the State Bar Court. Ca. Rules of Court, Rule 952(e)(3).

Conclusion

By reason of the importance of determining whether a party's consent to a stipulation may, for any cause, be withdrawn prior to approval by a constitutional court; whether the Petitioner's consent must be permitted to be withdrawn since it was an uninformed consent, so that this Court would be acting unconstitutionally in approving a stipulation based on an uninformed consent; and whether, by reason of the lack of service of the Memorandum of Costs with the stipulation and order, this

Court is without jurisdiction to award costs to the State Bar or approve the proposed order, Petitioner respectfully requests this Petition be referred to a Court of Appeals' panel to hear and determine these significant constitutional issues and that a Stay of proceedings within the State Bar Court and this Court issue until it has heard and determined the cause, and that this Honorable Court, in the interim, forebear from approving the proposed order.

I declare under penalty of perjury the above Petition is based on my own personal knowledge, information, and/or belief, and this verification is executed this 25th day of January, 1995 at San Jose, California.

RESPECTFULLY SUBMITTED,



JESSIE SHIOW-JIUAN HO
Petitioner Attorney *Pro Se*

JESSIE SHIOW-JIUN HO
111 North Market Street, Suite 707
San Jose, Ca. 95113

1-408-279-1093

Petitioner Attorney *Pro Se*

THE SUPREME COURT OF THE STATE OF CALIFORNIA

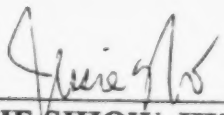
In the Matter of	Docket No. S44354
	State Bar Court Case No. 93-0-14171
JESSIE SHIOW-JIUAN HO	**Declaration of Counsel re: Unavailability of Transcript**
	Ca. Rules of Court, Rule 952(d)
No. 142844 A Member of the State Bar	

No hearing was conducted within the State Bar Court at any time. No Notice to Show Cause had issued. There was no hearing concerning whether the plea or waiver of rights was voluntary, intelligent, or informed prior to approval of the stipulated plea. As a result of the foregoing, there is no transcript

of a hearing.

I declare under penalty of perjury the above Declaration of Counsel is based on my own personal knowledge, information, and belief, and this verification is executed this 25th day of January, 1995 at San Jose, California

RESPECTFULLY SUBMITTED,



JESSIE SHIOW-JIUAN HO
Petitioner Attorney *Pro Se*

Supreme Court, U.S.
FILED
MAY 8 1995
OFFICE OF THE CLERK

No. 94-1638

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1994

Jessie Shiow-Jiuan Ho, *Petitioner,*

v.

The State Bar of California, *Respondent.*

To Petition for Writ of Certiorari
to the Supreme Court of
the State of California

BRIEF FOR RESPONDENT IN OPPOSITION

DIANE C. YU
LAWRENCE C. YEE
RICHARD J. ZANASSI*
555 Franklin Street
San Francisco, California 94102
Telephone: (415) 561-8200

Attorneys for Respondent

*Counsel of Record

QUESTIONS PRESENTED

1. Was the California Supreme Court's determination that recusal was not appropriate in light of petitioner's highly speculative and conclusory allegations of bias a denial of Due Process?

2. Whether the California Supreme Court's order of discipline against an attorney based, in part, on a stipulation that was properly before the Court, raises an important federal question which should be decided by this Court?

3. Whether there is an unconstitutional delegation of judicial power to the State Bar Court where all actions of the State Bar Court in attorney discipline matters are subject to the independent plenary review of the California Supreme Court?

4. Whether petitioner's vague and unsupported claims of financial interest on the part of State Bar Court judges and trial counsel raise an important federal question which should be decided by this Court?

TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

STATEMENT 1

REASONS FOR DENYING WRIT 11

CONCLUSION 23

TABLE OF AUTHORITIES

PAGE

Cases

Aetna Life Insurance Co. v. LaVoie
(1986) 475 U.S. 813 13,14

Conway v. State Bar (1989) 47 Cal.3d 1107 21

Flangas v. State Bar of Nevada
(9th Cir. 1981) 655 F.2d 947 12

Jacobs v. State Bar (1977) 20 Cal.3d 191 20

Lebbos v. State Bar (1991) 53 Cal.3d 37 . . . . . 21, 22

Rosenthal v. Justices of the Supreme Court of California
(9th Cir. 1990) 910 F.2d 561 . . . . . 20, 21

Saleeby v. State Bar (1985) 39 Cal.3d 547 20

Constitutions

United States Constitution
Fourteenth Amendment 13

California Constitution
Art. VI, § 9 20

Statutes

California Business and Professions Code
- section 6001 20
- section 6040 20
- section 6043 20
- section 6044 20
- section 6079.1 21
- section 6079.1(a) 20
- section 6079(d) 18
- section 6082 22
- section 6083 22
- section 6084 22
- section 6086.10 . . . . . 5, 18
- section 6086.5 20
- section 6086.65(d) 20
- section 6087 20
- section 6090 20
- section 6092.5 20
- section 6094.5 20
- section 6100 22

Rules

Rules of the Supreme Court of the United States
- rule 10 . . . . . 11, 12

California Rules of Court
- rule 951(g) 20, 22
- rule 953(b) 22

Former Rules of Professional Conduct
rule 1-310 9
rule 3-110 10
rule 4-100(A) 10

Rules of Professional Conduct
rule 5-300(B)(4) 16

Rules of Procedure of the State Bar
rule 135(b) 14

Transitional Rules of Procedure of the State Bar
rule 405-407 4
rule 407(b) 6
rule 407(c) 5, 14

STATEMENT

Petitioner, Jessie Shiow-Jiuan Ho, ("petitioner") is an attorney who has been suspended from the practice of law by Order of the California Supreme Court following a disciplinary proceeding in State Bar Court in which petitioner entered into a Stipulation as to Facts and Disposition ("Stipulation") with respondent the State Bar of California ("the State Bar"). Petitioner seeks a writ of certiorari to review the California Supreme Court's Order, issued March 16, 1995, denying her motion for recusal, petition for review and application for a stay of the order of suspension.

Petitioner first argues that a writ of review should be granted because the California Supreme Court's recusal procedures, or lack thereof, "pose due process problems". (Petition, pp. 6-7.) Petitioner next argues that, due to the "partisan" nature of the California Supreme Court, recusal of the California Supreme Court

justices in this case was and is required. (Petition, pp. 8-9.) Petitioner alleges that she withdrew consent to the Stipulation before it was approved by the State Bar Court and forwarded to the California Supreme Court. (Petition, p. 4.) Based, in part, on this withdrawal of consent, petitioner contends that the State Bar Court Order approving the Stipulation transmitted to the California Supreme Court on January 11, 1995 should not have been approved by that Court. (Petition, pp. 4-5, 9-11.) Petitioner further argues that her consent to the Stipulation was obtained without full disclosure by both State Bar trial counsel and the State Bar Court hearing judge, of the nature and extent of their financial interest in securing such Stipulation. (Petition, p. 5.) Petitioner also contends that the Stipulation should be voided because she was not notified, in advance, of the amount of costs to be assessed in connection with her case. (Petition, pp. 11-14.)

As will be shown more fully below, petitioner's arguments with respect to the "partisan" nature of the California Supreme Court are groundless, and recusal was not appropriate in her case. Petitioner's contentions regarding the validity of the Stipulation are equally without merit as (1) petitioner was advised that she would be required to pay costs associated with the State Bar's prosecution of her case from the outset; (2) petitioners's attempt to withdraw her consent to the Stipulation was untimely, insufficient and legally ineffective; and (3) petitioner's allegations regarding the State Bar Court's and State Bar employees' undisclosed financial interest in the outcome of her case are frivolous, without any factual basis, and entirely without merit.

A. Procedural History

Petitioner was admitted to the State Bar of California on December 11, 1989. In November of

1994, prior to the filing of a Notice to Show Cause, petitioner entered into a Stipulation as to Facts and Disposition with the State Bar concerning allegations of misconduct against her. Without making any corrections, additions or deletions, Petitioner signed the Stipulation on November 15, 1994 and mailed it back to the State Bar. On November 16, 1994, trial counsel for the State Bar signed the Stipulation on behalf of the State Bar.

Pursuant to former rules 405-407 of the Transitional Rules of Procedure of the State Bar[1], the signed Stipulation was submitted to the State Bar Court for approval. On November 21, 1994, the hearing judge entered an Order approving the Stipulation, and recommending the disposition to the California Supreme Court. In accordance with the Stipulation, the Order

---

[1]This is a reference to the rules which were in effect between May 27, 1989 and September 13, 1992.

further approved an award of costs to the State Bar pursuant to Business and Professions Code section 6086.10. The proof of service attached to the Order indicates that it was served on both State Bar trial counsel and petitioner at her official address of record.

Although petitioner had fifteen (15) days within which to make a motion to withdraw or modify her consent to the Stipulation for good cause, petitioner did nothing.[2] After expiration of the fifteen (15) day deadline, petitioner apparently sent letters by certified mail to the State Bar Court hearing judge and California Supreme Court Chief Justice Lucas requesting the addressees to "[p]lease withhold acting upon my

---

[2]Rule 407(c) of the Transitional Rules of Procedure of the State Bar provides as follows: "Once adopted by the hearing judge, the stipulation shall bind the parties in the proceedings to which it relates unless withdrawn or modified with approval of the judge, upon good cause shown and upon application of a party made within fifteen (15) days of service of the order approving stipulation."

signature on the Stipulation as to Facts and Disposition until you hear from me. . . "[3] In accordance with rule 407(b) of the Transitional Rules of Procedure of the State Bar, the Order and the related record containing the Stipulation was filed with the Clerk of the California Supreme Court on January 11, 1995.

On January 26, 1995, petitioner filed a petition in the California Supreme Court, seeking relief from the Stipulation. Petitioner requested the Court to recuse itself from considering the matter and refer it to an appellate panel to resolve the issues posed in her petition. In addition, she requested a stay of the proceedings with respect to the Stipulation until the issues raised in her petition had been resolved.

---

[3]In addition, petitioner alleges that she sent two letters dated December 8, 1994 by regular mail to the same addressees. Because State Bar trial counsel was not served with copies of any of these letters, there is no way to verify this allegation.

The California Supreme Court denied the petition, application for a stay, and motion for recusal by an Order issued March 16, 1995 in case number S044354. Petitioner now seeks a writ of certiorari to review the California Supreme Court's Order.

B. Statement of Facts

The following is a summary of the facts as set forth in the Stipulation.

In approximately mid-July of 1990, petitioner began working in a law office set up by non-attorney Chung Dinh "Tony" Tran specializing in personal injury law.[4] At some point during the end of September in 1990, petitioner became aware of some improprieties regarding the manner in which Tran was handling the trust account set up by petitioner. In October of 1990,

---

[4]Although not a lawyer, Tran has been involved with several other attorneys who have been disciplined by the State Bar. He is currently serving a prison sentence as a result of his law office operations.

petitioner discovered that Tran had stolen trust account checks and forged her signature on them. In November of 1990, petitioner closed both her trust account and her general account and opened two new accounts. Eventually, Tran gained access to these accounts and again forged petitioner's signature on checks issued from the trust account. The general and trust account records show that client trust funds were misappropriated from both the old and new accounts. Although petitioner did not commit the misappropriation, she later became aware that certain medical care providers had not been paid for services provided to clients whose cases had been settled. Petitioner paid these medical care providers.

In December of 1990, Tran closed and moved the office without notifying petitioner. Nevertheless, petitioner located the new office and requested one of the employees to provide her with substitution of attorney forms for the cases petitioner had handled. The

employee told her to leave and threatened to call the police. Petitioner later made contact with one of the attorneys who had taken over the practice. This attorney promised to send substitution of attorney forms to petitioner, but petitioner never received substitutions for all of her former cases. In January of 1991, after petitioner detected the misuse of her new trust account, she closed both of the new accounts. Petitioner worked for Tran for a total of approximately four months.

Petitioner stipulated to the following acts of professional misconduct:

1. Petitioner formed and operated a partnership for the practice of law with a non-lawyer in wilful violation of Former Rule of Professional Conduct 1-310.[5]

2. Petitioner failed to adequately supervise non-

---

[5]All rules referred to in numbered paragraphs 1-3 were in operation between May 27, 1989 and September 13, 1992.

attorney personnel working in her office and thereby failed to perform competent legal services in violation of former Rule of Professional Conduct 3-110.

3. Petitioner failed to adequately supervise and monitor client funds pertaining to her law office and failed to supervise and monitor office staff with respect to their handling of client funds, with the result that client settlement drafts were not deposited into her trust account and other funds were misappropriated in wilful violation of former Rule of Professional Conduct 4-100(A).

The Stipulation and State Bar Court Order issued thereon recommended that petitioner be suspended from the practice of law for a period of two (2) years, that the execution of the suspension be stayed, that petitioner be placed on probation for one (1) year with conditions, including actual suspension for forty-five (45) days. The California Supreme Court approved these

recommendations in an Order issued March 16, 1995. Petitioner is currently serving the 45-day actual suspension.

REASONS FOR DENYING WRIT

A. The California Supreme Court's Determination that Recusal Was Not Appropriate and Its Subsequent Order Imposing Discipline Does Not Raise Due Process or Important Federal Questions

Review on a writ of certiorari is not a matter of right and will be granted only where there are special and important reasons. Rule 10, Rules of the Supreme Court of the United States. None of the reasons set forth in rule 10 are available here. There is no decision by a federal appellate court (rule 10(a)); the California Supreme Court decision at issue does not conflict with that of any other state court of last resort or of a federal appeals court (rule 10(b)); and the California Supreme

Court decision at issue does not decide an important federal question of federal law that should be decided by this Court, nor is it in conflict with any decision of this Court (rule 10(c)).

The absence of a *mandatory* statutory recusal mechanism applicable to the justices of the California Supreme Court does not make a showing of bias unnecessary. As in any case, it was entirely appropriate for the California Supreme Court to be given the opportunity to decide the issue of alleged bias of its individual members for itself. Flangas v. State Bar of Nevada (9th Cir. 1981) 655 F.2d 947, 950.

B. Petitioner's Claims Regarding the "Partisan" Nature of the Supreme Court Are Groundless and Recusal is Unnecessary

Petitioner contends that the California Supreme Court is biased in favor of the State Bar, and that it cannot therefore carry out, in a disinterested manner, its

adjudicative role in reviewing and making final determinations with respect to the discipline of attorneys in the State of California. (Petition, pp. 6-8.) In support of these contentions, petitioner argues that the California Supreme Court's role in appointing State Bar Court judges and awarding costs to the State Bar are in conflict with its adjudicative role. (Petition, p. 7, fn. 2.) Petitioner cites this Court's decision in Aetna Life Insurance Co. v. LaVoie (1986) 475 U.S. 813 for the proposition that, because of this supposed conflict, the California Supreme Court should have recused itself from reviewing the State Bar Court's approval of the Stipulation and recommendation of discipline in her case.

Petitioner's reliance on Aetna, supra, is unavailing. In Aetna, the Court held that the Due Process Clause of the Fourteenth Amendment required that an Alabama Supreme Court justice be recused for bias in circumstances where the justice had a " . . .

direct, personal, substantial, pecuniary interest . . ." in the outcome of a particular case. Aetna Insurance Co. v. LaVoie, supra, 475 U.S. at 822. In the instant case, rather than presenting evidence to demonstrate a direct, personal, substantial pecuniary interest in her case, petitioner merely proffers highly speculative and conclusory allegations of bias.

C. **Petitioner's Attempt to Withdraw Her Consent to the Stipulation Was Insufficient, Untimely and Ineffective**

Former rule 407(c) of the Transitional Rules of Procedure of the State Bar[6] provided as follows: "Once adopted by the hearing judge, the stipulation shall bind the parties in the proceedings to which it relates unless

---

[6]This rule corresponds with, and is essentially the same as, current rule 135(b) of the Rules of Procedure of the State Bar (effective January 1, 1995). The Rules of Procedure of the State Bar are published in volume 23, West's Annotated California Codes (Rules of Court) part 2.

withdrawn or modified with approval of the judge, upon good cause shown and upon application of a party made within fifteen (15) days of service of the order approving stipulation." (Emp. added.) Because petitioner did not apply to the State Bar Court hearing judge to withdraw or modify the stipulation for good cause, the hearing judge had no choice but to enter an Order approving the Stipulation and submit it to the California Supreme Court. Although petitioner appears to have had second thoughts about the Stipulation, and apparently attempted to communicate her feelings to the hearing judge after the fifteen (15) day time deadline, her attempt had neither practical nor legal effect on the binding nature of the Stipulation.

Not only was petitioner's letter sent after the

fifteen (15) day time deadline,[7] it was also not in the proper form of a motion to withdraw consent, and did not specifically state that she wished to withdraw her consent to the Stipulation. Rather, the letter appears to seek an abatement of the proceedings until the court "hear[s] from [her]". Aside from the vagueness of her request, petitioner's letter gave no hint of what her "good cause" might be for seeking this abatement. In addition, State Bar trial counsel was never served with copies of any of petitioner's letters.[8]

Therefore, the State Bar Court hearing judge's decision to submit an Order approving the Stipulation to

---

[7]The deadline to make a motion based upon a showing of good cause to withdraw consent to the Stipulation expired December 11, 1994. Petitioner's certified letter was apparently received December 14, 1994.

[8]This is a violation of Rule of Professional Conduct 5-300(B)(4). The Rules of Professional Conduct are published in volume 23, West's Annotated California Codes (Rules of Court), part 2.

the California Supreme Court was entirely correct under the circumstances.

D. Petitioner's Claims Regarding Conflict of Interest and Financial Interest of the Hearing Court Judge and Trial Counsel are Frivolous, Unsupported by any Evidence, and Wholly Without Merit

Petitioner next argues that because the State Bar Court failed to disclose its secret financial interest in the outcome of her case, her consent to the Stipulation was "uninformed" and the Stipulation should be voided. (Petition, pp. 11-14.)

Complimenting the lack of relevant legal authority supporting her theory, petitioner presents no facts to demonstrate that an undisclosed financial interest exists. She relies instead on vague, conclusory and false allegations concerning the structure and function of the State Bar disciplinary system. Specifically, petitioner

contends that the State Bar Court is operated from funds obtained, in the form of costs, from respondents in disciplinary proceedings. (Petition, p. 7, fn. 2.) This is perhaps a reference to the fact that in 1986, the California Legislature provided that costs of disciplinary proceedings shall be imposed as part of any order imposing discipline of a public reproval, suspension or disbarment. Cal. Bus. & Prof. Code § 6086.10. The fact that disciplinary costs are collected and paid into the treasury of the State Bar to help finance its regulatory activities in no way supports petitioner's assertions that these funds are used for the State Bar Court Judges' private purposes. The salaries of State Bar Court Judges are set by statute, (Cal. Bus. & Prof. Code § 6079(d)), and are not dependent, to any extent, upon the collection

of disciplinary costs.[9]

D. As A Matter of Law, There Is No Unconstitutional Delegation of Judicial Power To The State Bar Court

Petitioner next argues that in addition to the undisclosed financial interests of State Bar employees in the outcome of discipline cases, the disciplinary system itself is unconstitutional. (Petition, pp. 12-13.) Again, this argument misrepresents the role of the California Supreme Court vis a vis the State Bar and the State Bar Court.

The State Bar of California is a public corporation established in the judicial branch of government for the

---

[9]It should be noted that monies collected from attorneys found culpable of misconduct comprise only a tiny fraction of the State Bar's treasury. The revenue received from disciplinary costs assessed against attorneys, as a percentage of total annual membership fees collected, ranged from .1% to .7% of the total annual membership fees collected in the calendar years from 1990 to 1994.

purpose of performing governmental functions in the administration of justice. Cal. Const. Art. VI, § 9; Cal. Bus. & Prof. Code, § 6001. Historically, the State Bar has acted as the administrative arm of the California Supreme Court in matters related to attorney discipline. Rosenthal v. Justices of the Supreme Court of California (9th Cir. 1990) 910 F.2d 561, 566; Saleeby v. State Bar (1985) 39 Cal.3d 547, 557. The State Bar has statutory authority to prosecute attorney disciplinary proceedings (Cal. Bus. & Prof. Code, §§ 6040, 6043, 6044, 6090, 6092.5, 6094.5) and the State Bar Court has separate statutory authority to adjudicate such proceedings. Cal. Bus. & Prof. Code, §§ 6079.1(a), 6086.5, 6086.65(d). Within this framework, the California Supreme Court retains inherent and exclusive plenary power to control all matters related to attorney discipline. Jacobs v. State Bar (1977) 20 Cal.3d 191, 196; Cal. Bus. & Prof. Code, § 6087; Cal. Rules of Court, rule 951(g). Indeed,

"[f]inal authority for disbarment [and suspension] rests not with the bar but with the state Supreme Court." Rosenthal, supra, 910 F.2d at 566-567.

Two California Supreme Court decisions, Lebbos v. State Bar (1991) 53 Cal.3d 37 and Conway v. State Bar (1989) 47 Cal.3d 1107, expressly rejected the argument that the California disciplinary system represents an improper delegation of judicial authority in violation of the California Constitution. Both cases were decided during the pre-1989 disciplinary system in which the State Bar Court was comprised of volunteers appointed by the State Bar Board of Governors. However, both decisions are highly relevant and applicable to the structure of the present system, in which full-time State Bar Court judges are appointed directly by the California Supreme Court. Cal. Bus. & Prof. Code § 6079.1. The main thrust of these decisions is that an attorney disciplinary system over

which this Court maintains ultimate authority and control cannot be unconstitutional. As the California Supreme Court stated in Lebbos, ". . . the judicial power in disciplinary matters remains with the [Supreme] Court, and was not delegated to the State Bar." Lebbos v. State Bar, supra, 53 Cal.3d at p. 48. (Emp. added.) The State Bar Court as presently constituted remains subject to the ultimate authority of the California Supreme Court.[10]

---

[10]All actions of the State Bar Court in attorney discipline matters are subject to the independent, plenary review of this Court. (Cal. Bus. & Prof. Code §§ 6082, 6083, 6087, 6100; Rule 951(g), California Rules of Court.) If no timely petition for review is filed, the recommendation of the State Bar Court for disbarment or suspension is filed as an order of the Supreme Court. (Rule 953(b), California Rules of Court; see also Cal. Bus. & Prof. Code § 6084.) As such, the Court issues its own order which is filed by the Clerk, incorporating the recommendation of the State Bar Court.

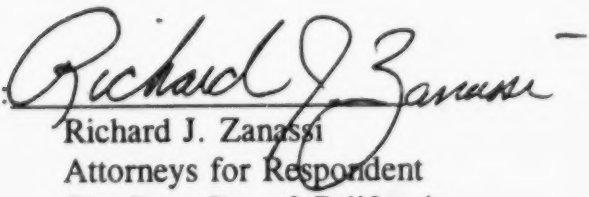
CONCLUSION

Petitioner has failed to present any facts to support her request for a writ of certiorari, nor has she demonstrated that any of the actions taken by respondent in connection with her case were improper. For these and all of the foregoing reasons, respondent the State Bar respectfully requests this Court to deny the petition for writ of certiorari.

DATED: May 5, 1995

Respectfully submitted,

Diane C. Yu
Lawrence C. Yee
Richard J. Zanassi

By: 
Richard J. Zanassi
Attorneys for Respondent
The State Bar of California

(4)

No. 94-1638

Supreme Court, U.S.
FILED
MAY 15 1995
CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1994

JESSIE SHIOW-JIUAN HO

Petitioner

vs.

THE STATE BAR OF CALIFORNIA

Respondent

REPLY TO BRIEF IN OPPOSITION

JESSIE SHIOW-JIUN HO
111 North Market Street, Suite 707
San Jose, Ca. 95113

1-408-279-1093

Petitioner Attorney *Pro Se*

27PP

Table of Contents

I. The Admitted Lack of Disclosure of the $1,517.70 demanded for the Salaries and Benefits of the Investigators, prosecutors, and co-employee judges Should Void the Stipulation 5

II. The Lack of Recusal Remedy Concerning Justices of a State Supreme Court Implicates the Due Process Clause 13

Conclusion.....17

Table of Authorities

Cases

Aetna Life Insurance Company v. La Voie 475 U.S.....15
813, 89 L. Ed. 823, 106 S. Ct. 1580 (1988)
Armstrong v. Manzo 380 U.S. 545, 552, 85 S. Ct. 1187...17
1191, 14 L. Ed. 2d. 62 (1965)
Flangas v. State Bar of Nevada 655 F. 2d. 947, 950 14
(Ninth Cir. 1981)
Kaufman v. Court of Appeals 31 Cal. 3d. 933, 939-40.....15
(1982)
Lebbos v. State Bar of California 53 Cal. 3d. 37, 278.....16
Cal. Rptr. 845, 806 P. 2d. 317 (1991), ft.1, certiorari
denied 112 S. Ct. 352, 116 L. Ed. 2d. 291 (1991).
Mathews v. Eldridge 424 U.S. 319, 333, 85 S. Ct. 893, ...17
902, 47 L. Ed. 2d. 18 (1976)
Partington v. Gedan (Partington I) 880 F.2d. 116.....14
(Ninth Cir. 1989), cert. denied,____U.S.____, 110 S. Ct.
3302, 111 L. Ed.2d. 810 (1990), and cert. granted and vacated
on other grounds, ___U.S.___, 110 S. Ct. 3265, 111 L. Ed.2d.
776 (1990)
Shaw v. Garrison 467 F. 2d. 113 (Fifth Cir.1972)..... 11
cert. denied 409 U.S. 1024, 93 S. Ct. 467, 34 L.Ed.
2d. 317 (1972)

California Constitution

Article 6, section 12.....15
Article 6, section 18.....15

California Business and Professions Code

Section 6086.5.....4
Section 6068.10.....4,9

California Rules of Court

Rule 1-100.....15

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1994

JESSIE SHIOW-JIUN HO

Petitioner

vs.

THE STATE BAR OF CALIFORNIA

Respondent

REPLY TO BRIEF IN OPPOSITION

Petitioner Attorney states, in response to the Brief of Respondent in Opposition to the Petition for a Writ of Certiorari, that the prosecuting party, The State Bar of California, admits it did not disclose it was assessing its employee prosecutor, investigator, and judge's salaries and benefits as claimed " costs" for the stipulation entered without proceeding and that it would impose its salaries and benefits for any further probation proceedings its private court might have. It also admits it did not advise the Petitioner of its claim for its "costs" until after the

period within its State Bar Court had expired to set aside the stipulation. P: 4, RB:14-16. It also admits it changed the law relied on between the time the Petitioner entered into the stipulation, November 16, 1994 and when it transmitted it for approval to the California Supreme Court on January 11, 1995. Petition, which is hereinafter referred to as "P":14-15, Brief for Respondent in Opposition, hereinafter referred to as "RB."

The State Bar admits it does not disclose to attorneys that it imposes its employee judges, investigators, prosecutors' salaries and benefits on the attorney for this and any probation proceedings, that it does not disclose that "costs" means the salaries and benefits of its employee judges, investigators, prosecutors, that it does not disclose that monies payable to it are required in order for an attorney to fulfill the terms of a probation, that it does not disclose the entity approving the stipulation and in charge of overseeing compliance with probation and revoking it is not a Court of law, as represented by the name,"State Bar Court," but is a private program created and run by the private prosecuting party and its employees, that it does

not disclose that the claimed "judge" is not a Judge, but an employee of the State Bar selected, hired, and paid by the prosecuting party who has a financial interest for its party employer in revoking probation so as to retain his $125,000 a year job and obtain from the attorney monies for his salary and benefits and that of his co-employee prosecutors, investigators, judges, and probation personnel, and additional funds to finance other programs for his party employer, that the probation and its revocation is overseen by another employee of the prosecuting party who has a financial interest in revoking probation so as to obtain monies for his employer to finance or recoup his salaries and benefits and that of his co-employee prosecutors, investigators, judges, and that the entity overseeing probation and its revocation has no rules of a Court of law, no rules of procedure, no law, but operates on private rules written by the private prosecuting party which owns it and which are for its exclusive financial and partisan benefit.

A survey by the American Bar Association indicates no State permits collection of salaries and benefits as "costs," except California's private and partisan State Bar licensing system.

As stated by the State Bar, "the State Bar has statutory authority to prosecute attorney disciplinary proceedings." RB: 20. The employees of the prosecuting party run and own a private court to obtain monies for themselves at the expense of each accused. Appendix B-1, B-2. California Business and Professions Code sections 6086.5, 6086.10(b)(3). The accuseds are the class of compelled attorney members who are prohibited from participation and who already paid, by way of mandatory dues, for a discipline system. But the employees "double dip." They collect the mandatory dues and then use them for other than discipline and then collect additional funds by finding all accuseds guilty and claim "costs" are their salaries and benefits, perks, and extras, but which are never disclosed to an accused. Appendix A.

Because it is unrefuted that the State Bar has obtained over fourteen million dollars for itself from the takings of 3,091 attorney's licenses in less than four and a half years, P:8, it may claim those sums are less than one percent of annual revenues, but those claims have been discredited because the State Bar refuses to be audited, has no C.P.A., and tallies only one part of unpaid assessments, not all of the paid assessments, such that the

legislature has pending legislation to require a certified public audit of the State Bar's finances which they have refused to disclose or comply with. P:8, RB: 198, ft. 9.

I.

The Admitted lack of Disclosure of the $1,517.70 demanded for the Salaries and Benefits of the investigators, prosecutors, and co-employee judges Should Void the Stipulation

While the State Bar asserts the judgment approving a stipulation followed disciplinary proceedings within its State Bar Court, RB:1, it is undeniable there were no proceedings. The Petitioner was induced by non-disclosure privately by the prosecutor and his co-employee investigator to enter into a stipulation with the threat of commencement of proceedings and harsh punishment if she did not agree. No notice ever issued. P: 3. Had the Petitioner been advised of the partisan roles and financial interests of the prosecutor, investigator, and their co-employee judges and probation officers and of their private, partisan, and financially interested State Bar Court, the Petitioner would have foregone entering into the stipulation. She would

have been forewarned that agreeing would subject her to an initial assessment for their salaries and benefits and to probation for two years wherein she would be subject to repetitive proceedings by those desirous of obtaining more and more money from her by finding a defect and surrendering her license for private profit for themselves and their employer .

As the State Bar acknowledges, it had disciplined several other attorneys who became victims of the same fraud ring which preyed on the Petitioner. RB:7, ft. 4. It had done so prior to the Petitioner being victimized. It was the Petitioner's assistance to the District Attorneys of two counties, her appearance before a grand jury, her testimony that resulted in the ringleader being sent to jail for six years. Not only did the State Bar not help the criminal authorities close down this fraud ring, it encouraged its success for several years, because it makes money for itself by making sure the fraud rings prosper, because they can keep getting money for themselves from the victimized attorneys. Not one cent is spent in educating attorneys about these fraud rings. Not one cent is spent in forewarning attorneys about the

prevalence and *modus operandi* of these fraud rings' operations in the State. Not one cent is spent in assisting the criminal authorities in closing down these fraud rings. Not one cent is spent in helping the compelled attorney members avoid these fraud rings. The criminal authorities consider the State Bar covert aiders and abettors to crimes, not persons interested in preventing crimes or aiding law enforcement.

Needless to say, the shock of being victimized with a fast-talking State Bar prosecutor who concealed his secret, financial agenda caused the Petitioner to agree to a guilt she did not have. Not only did she not form or operate a partnership with a non-lawyer or fail to supervise employees or her trust account, no attorney would have been able at an earlier moment than did the Petitioner to learn what was the true intent of the sophisticated fraud ring or to extricate herself faster than did the Petitioner, especially when the State Bar makes sure no attorney is advised of the existence and prevalence of these fraud rings because that is against its financial self-interest. That the Petitioner paid over nine thousand dollars from her private funds to reimburse

everyone over a year before she went to the State Bar indicates that the private, for profit licensing system of the State Bar has a heavy social and monetary cost when those who are supposed to protect the Public and attorneys have the opposite goal in order to financially benefit themselves at the expense of the interests of the Public and the legal profession.

The State Bar of California, a legislatively created entity, represents its employees against the compelled attorney members. They financially benefit themselves when they make sure the compelled members have no help, no assistance, no education, and no where to go for it either. They set up the lawyers for failure and surrender them with a lust for their cash. What distinguishes this State Bar from the fraud ring that victimized the Petitioner?

The State Bar admits the stipulation signed by the Petitioner had no sums of money disclosed. There was no monies demanded. There was no disclosure of any monies to be paid. The only clause in the stipulation stated that, "the agreed disposition is eligible for costs to be awarded to the State Bar.

(Bus. & Prof. Code s. 6086.10 and 6140.7). Petitioner has been notified of his or her duty to pay costs. The amount of costs assessed by the Office of Trial Counsel will be disclosed in a separate cost certificate submitted following approval of this stipulation by a hearing judge. The amount of costs assessed by the State Bar Court will be disclosed in a separate cost certificate submitted upon finalization of this matter." Appendix D-16, Stip, Pg.4, item H1." RB: 4-5.

While the State Bar claims that one of its employee hearing judges "further approved an award of costs to the State Bar pursuant to Business and Professions Code section 6086.10," RB: 5, and claims this was served on the Petitioner, it is undeniable this employee did not award a dollar figure, but as all other attorneys have been misled, put "costs awarded to the State Bar," without disclosure she was giving herself her salary and benefits from the Petitioner of $ 473.00 for putting her name on the stipulation without any proceedings ever conducted as well as the salary and benefits of her co-employee prosecutor and investigators. P:5.

It is irrefutable that the stipulation was signed November 15, 1994, RB:4, allegedly approved by one of the State Bar's employee judges on November 21, 1994, but the State Bar waited until January 11, 1995, after they had changed the law for their private court by barring all rights of accuseds to contest their money demands, Petition, hereinafter "P":14-15, to send to the Petitioner their money demand for $1,517.79 as claimed "costs" and the stipulation for approval by the California Supreme Court. Appendix A.

As Appendix A indicates, the Certificate of Costs mailed January 11, 1995 for the first time advises the Petitioner there are no actual costs, but that the State Bar has awarded itself $1,517.70 anyway. It claims that $348.70 is "other taxable costs." It claims " reasonable costs" are $387.00 for the Office of Investigation, $309.00 for the Office of Trial Counsel, and $473.00 for its Office of State Bar Court. There are no transcript costs and court reporter's fees. There are no taxable costs. There are no deposition costs, service of process, witness costs, court-ordered transcripts, exhibit costs, court-ordered expert

costs. There is not one penny of out-of-pocket expense. No papers were even processed. So what are they assessing for themselves? They are assessing their salaries and benefits and extra funds for their employer. If they do not do this, they are fired. The employee judge is assessing the equivalent of fourteen thousand dollars an hour for her salary and benefits, the prosecutor $473.00 an hour and his co-employee investigator a minimum of $387.00 an hour. Because that is not enough money for them, they threw in an extra $348.70 as "other reasonable costs." Appendix A.

It is irrelevant to the constitutional issues what these funds are being used for. RB:18. They provide a financial incentive for a prosecutor to maintain frivolous prosecutions against innocent attorneys, because if he does not do so and bring in the money, his State Bar employer fires him. These are, in fact, bad faith prosecutions for financial benefit for his private employer and in order to keep his job. See **Shaw v. Garrison** 467 F. 2d. 113 (Fifth Cir. 1972),cert. denied, 409 U.S. 1024, 93 S. Ct. 467, 34 L. Ed. 2d. 317 (1972). His co-employee

investigator knows if he does not misinvestigate the case in order to find guilt and recommend the issuance of charges against an attorney so that the money may be awarded for his employer, he will be fired from his job. Their mutual co-employee judge knows she has been selected, hired, and is paid by the prosecuting party. Her salary alone is a minimum of $125,000 a year paid by the prosecuting party. Although she is appointed by the California Supreme Court for six years to be an employee judge of the prosecuting party's State Bar Court, she will not be reappointed, not assigned cases, not provided any benefits or perks, unless she finds each accused guilty and orders each of them to pay her employer for her salary and benefits and those of her co-employee prosecutors and investigators plus extra funds for other programs. She'll lose her job if she finds an accused innocent of anything, because the attorney may then collect monies from her employer, rather than make money for it. Appendix B-2 .

As long as this financial incentive exists, no accused would agree to a disposition with this State Bar if it were disclosed. So it is concealed until it is too late to set it aside.

II.

The Lack of Recusal Right or Remedy Concerning Justices of a State Supreme Court Implicates the Due Process Clause

The respondent, The State Bar of California, contends no substantial federal question is presented requiring the resolution by this Court. The prospect of 145,000 attorneys summarily disbarred and suspended in order for monies to be obtained from them to finance the salaries and benefits and extracurricular private programs of a privately financed prosecuting party whose highest paid employees ($125,00 each for eight employees and $140,000 for the ninth) are appointed and overseen by the Justices of the only constitutional court available to provide any review for an accused is a substantial federal question of constitutional import.

That 3,091 attorneys have been summarily disbarred or suspended, with all court access summarily denied, with a minimum admitted financial benefit of over fourteen million dollars awarded to and for the party employer of the constitutional court's appointees in less than four and a half years,

poses the federal question that the licensing of attorneys in the largest State in the United States is and has been tainted by partisan role and private profit with the absence of a fair and impartial and neutral adjudicator for over six years. P:8. Appendix A.

The State Bar proffers that an absence of mandatory recusal remedy to disqualify State Supreme Court Justices does not pose a due process problem. Brief for Respondent in Opposition, hereinafter referred to as "RB":12. Unlike **Flangas v. State Bar of Nevada** 655 F. 2d. 947, 950 (Ninth Cir. 1981) and **Partington v. Gedan (Partington I)** 880 F.2d. 116 (Ninth Cir. 1989), cert. denied,____U.S.____, 110 S. Ct. 3302, 111 L. Ed.2d. 810 (1990), and cert. granted and vacated on other grounds, ___U.S.___, 110 S. Ct. 3265, 111 L. Ed.2d. 776 (1990), the California Rules of Court have no provisions for recusal of a State Supreme Court Justice. Ca. Rules of Court, Rules 1-100. The California Constitution provides a judge is disqualified only when he is under indictment or an information or has been recommended for removal by the California

Commission on Judicial Performance. Article 6, section 18, Ca. Constitution. A majority of the members of this Commission are chosen by the State Bar and State Supreme Court.

While the California Constitution provides for transfer of cases to a State Court of Appeals or assignment of State Court of Appeals' Justices to sit in place and instead of the Justices of the California Supreme Court, this is discretionary with the California Supreme Court. Article 6, sections 12 and 18, California Constitution, California Rules of Court, Rules 1-100.

The California Supreme Court has held that state judicial disqualification law does not apply to it. Each Justice determines his own bias or prejudice. The only issue, on appeal, is whether proceedings are prejudicially unfair. Since there is no state appeal from the State Supreme Court, there is no right and no remedy. **Kaufman v. Court of Appeals** 31 Cal. 3d. 933, 939-40 (1982). While this Court held in **Aetna Life Insurance Company v. La Voie** 475 U.S. 813, 89 L. Ed. 823, 106 S. Ct. 1580 (1988) that a subjective test such as that used in California offends due process of law, the California Supreme Court has declined to

adopt, follow, or cite **Aetna, supra.** It applies its subjective test and its state decision to permit it to sit on State Bar cases wherein in disbarring and suspending attorneys, it orders monies paid to recoup the salaries and benefits of its appointees and their co-employees in the State Bar and to fund programs administered by its appointees to the State Bar party. **Lebbos v. State Bar of California** 53 Cal. 3d. 37, 278 Cal. Rptr. 845, 806 P. 2d. 317 (1991), ft.1, cert. den.112 S. Ct. 352, 116 L. Ed. 2d. 291 (1991).

While grounds for recusal of a judge must be pleaded, the fact there are no procedures to file an affidavit, a challenge, a motion to present issues concerning the bias of a State Supreme Court Justice, no rule permitting it, no statute permitting it, and no constitutional provision permitting it except for indictment or recommended removal of a judge, and the state case law states a State Supreme Court Justice is never required to remove himself from a case since there is no state appellate remedy, indicates there is not a means to uphold, enforce, or present this Court's **Aetna, supra**, decision and have the issues presented or heard within the state system or to obtain a ruling prior to final

disposition which would permit a party access to the federal court to hear and determine the bias issue prior to the bias being acted upon and causing a party irreparable harm.

Is not the absence of recusal rule, statute, procedures, constitutional provisions providing for recusal of a State Supreme Court Justice in California a denial of "an opportunity to be heard at a meaningful time and in a meaningful manner," **Mathews v. Eldridge** 424 U.S. 319, 333, 85 S. Ct. 893, 902, 47 L. Ed. 2d. 18 (1976) (quoting **Armstrong v. Manzo** 380 U.S. 545, 552, 85 S. Ct. 1187, 1191, 14 L. Ed. 2d. 62 (1965)?

Conclusion

The Judgment based solely on the consent of the Petitioner to a stipulated disposition to which she had withdrawn her consent prior to its approval by the California Supreme Court should be summarily reversed. The State Bar admits it did not disclose it was requiring the Petitioner to pay $1,517.70 for its employees' salaries and benefits until after the time it had adopted for its private court to set the stipulation aside, and that it employs and pays the judge and the probation personnel, all of

whom would also want their salaries and benefits paid for over two years by the Petitioner being subject to continuous probation proceedings maintained by those financially interested in revoking it. As stated in **Tumey v. Ohio,** 273 U.S. 510, 47 S. Ct. 437, 71 L. Ed. 749 (1927), the prohibition on financially interested adjudicators is founded on the rule of reason that that those who are financially interested "are induced to convict when in justice they should acquit." **Tumey, supra**, p. 527.

For the foregoing, the Petitioner requests the Petition for a Writ of Certiorari be granted.

RESPECTFULLY SUBMITTED,

Dated: May 12, 1995

JESSIE SHIOW-JIUAN HO
Petitioner Attorney *Pro Se*

FOR STATE BAR COURT

FILED JANUARY 11, 1995

STATE BAR COURT
CLERK'S OFFICCE
LOS ANGELES

STATE BAR COURT
OF THE STATE BAR OF CALIFORNIA
1149 SOUTH HILL STREET 5TH FLOOR
LOS ANGELES, CA. 90015

In the Matter of

JESSIE SHIOUW-JIUAN HO

Member of the State Bar

CERTIFICATE OF COSTS CASE NO. 93-0-14171

Imposition of the following costs are recommended pursuant to Business and Professions Code Section 6086.10(b)(1)-(3):

1. Transcript Costs and Court Reporter's Fees.....1..$.....0
2. Taxable Cost Recoverable (see attached Statement(s) of Costs)
   a. Deposition Costs.....2a.$.....0
   b. Service of Process Costs.....2b.$.....0
   c. Witness Costs.....2c.$.....0
   d. Court-ordered Transcripts.....2d. $.....0
   e. Exhibit Costs.....2e. $.....0
   f. Court-Ordered Expert Costs.....2f. $.....0
   g. Other Taxable Costs.....2g $.348.70

3. Reasonable Costs (see attached Statement(s) of Costs)

a. Office of Investigation Costs.....3a. $ 387.00
b. Office of Trial Counsel Costs.....3b. $ 309.00
c. Office of State Bar Court Costs.....3c. $ 473.00

TOTAL COSTS.....TOTAL $1,517.70

I, Judy Duffield, Clerk of the State Bar Court,do hereby certify that, to the best of my knowledge and belief, the above costs, naed on this certificate and the accompanying cost statements are correct as provided by rule 461, Rules of Procedure of the State Bar of California.

Judy Duffield
Clerk of the State Bar Court

Date: January 11, 1995

By: (signed)

CHARLES NETTLES
ADMINISTRATIVE
ASSISTANT

Certificate of Costs Submitted by the Office of Investigation and the Office of Trials of the State Bar of California

In the Matter of **Shiow-Jiuan Ho, No. 142844**
Case Number(s) **93-0-14171**

Pursuant to Business and Professions Code, it is requested that **Shiouw-Jiuan Ho,** a member of the State Bar of California be ordered to pay the following costs.

TAXABLE COSTS

1. Deposition Costs . . . . . $_____
2. Exhibit Costs..... _____
3. Court-ordered Expert Costs..... _____
4. Service of Process..... _____
5. Court-ordered reporting and Transcripts..... _____
6. Witness Costs..... _____
7. Other Reasonable Costs..... 348.70

Total Taxable Costs .....$ 348.70

REASONABLE COSTS OF INVESTIGATION, HEARING, AND REVIEW

1. Pursuant to State Bar Approved Models
   a. Office of Investigation . . . .$ 387.00
   b. Office of Trials.....$ 309.00
2. Extraordinary Costs
   a. Office of Investigation . . . .$_____
   b. Office of Trials.....$_____

Total Costs of Investigation, Hearing, and Review....$696.00

TOTAL OF ALL COSTS.....$1,044.70

Dated: December 14, 1994 BY: (SIGNED)

_____
ADMINISTRATIVE ASSISTANT

STATEMENT OF COSTS

Office of the State Bar Court of the State Bar of California

In the Matter of Shiow-Jiuan Ho, No. 142844
Case Number(s) 93-0-14171

Pursuant to Business and Professions Code section 6086.10, it is requested that Jessie Shiow-Jiuan Ho, a member of the State Bar of California, be ordered to pay the following costs.

Reasonable Costs of the Office of the State Bar Court

1. **Level One Assessment** $473.00
   [Stipulated disposition reached prior to filing of a Notice to Show Cause]

2. **Level Two Assessment** . . . . . $_____
   [Stipulated disposition reached prior to time of trial]

3. **Level Three Assessment** . . . . . $_____
   [Stipulated disposition reached at time of trial or trial not exceeding one day is conducted]

4. **Level Four Assessment** . . . . . $_____
   [Trial exceeding one day is conducted]

5. **Resignation of Member with Charges Pending** $_____

Judy Duffield
Clerk of the State Bar Court

Date: January 11, 1995

By: (signed)
_____
CHARLES NETTLES
ADMINISTRATIVE
ASSISTANT

LAWYERS DISCIPLINED* AS OF JULY 31 1994

YEAR/ TYPE	Disbarred	Disciplined with actual suspension	Disciplined with probation without actual suspension	Public Reprovals	Private Reprovals	Resigned with charges pending
1988	51	89	21	29	22	61
1989	51	102	26	45	24	90
1990	67	212	59	54	50	80
1991	64	219	76	34	77	94
1992	40	199	98	60	94	111
1993	53	218	124	68	112	95
1994 to 7/31	36	115	75	27	75	67
TOTAL for years 1989 through 7/31/94	311	1065	458	288	432	537
TOTAL disciplined for years 1989 through 7/31/94	3091	Total minimum administrative costs awarded to the State Bar, once Notice to Show Cause is issued (based on $4500.00 average per case)	$11,965,500.00	Total minimum rying conditions costs as e result of State Bar action (Based on $750.00 average per case)	$2,085,000.00	

*These statistics count individual members (as opposed to cases involving members or orders within cases) and use the effective date of the final Court order imposing the discipline to determine the date of discipline imposed (as opposed to the date the order was filed)